UNIVERSITY LAW COLLEGE MAGAZINE

1948-49 & 1949-50

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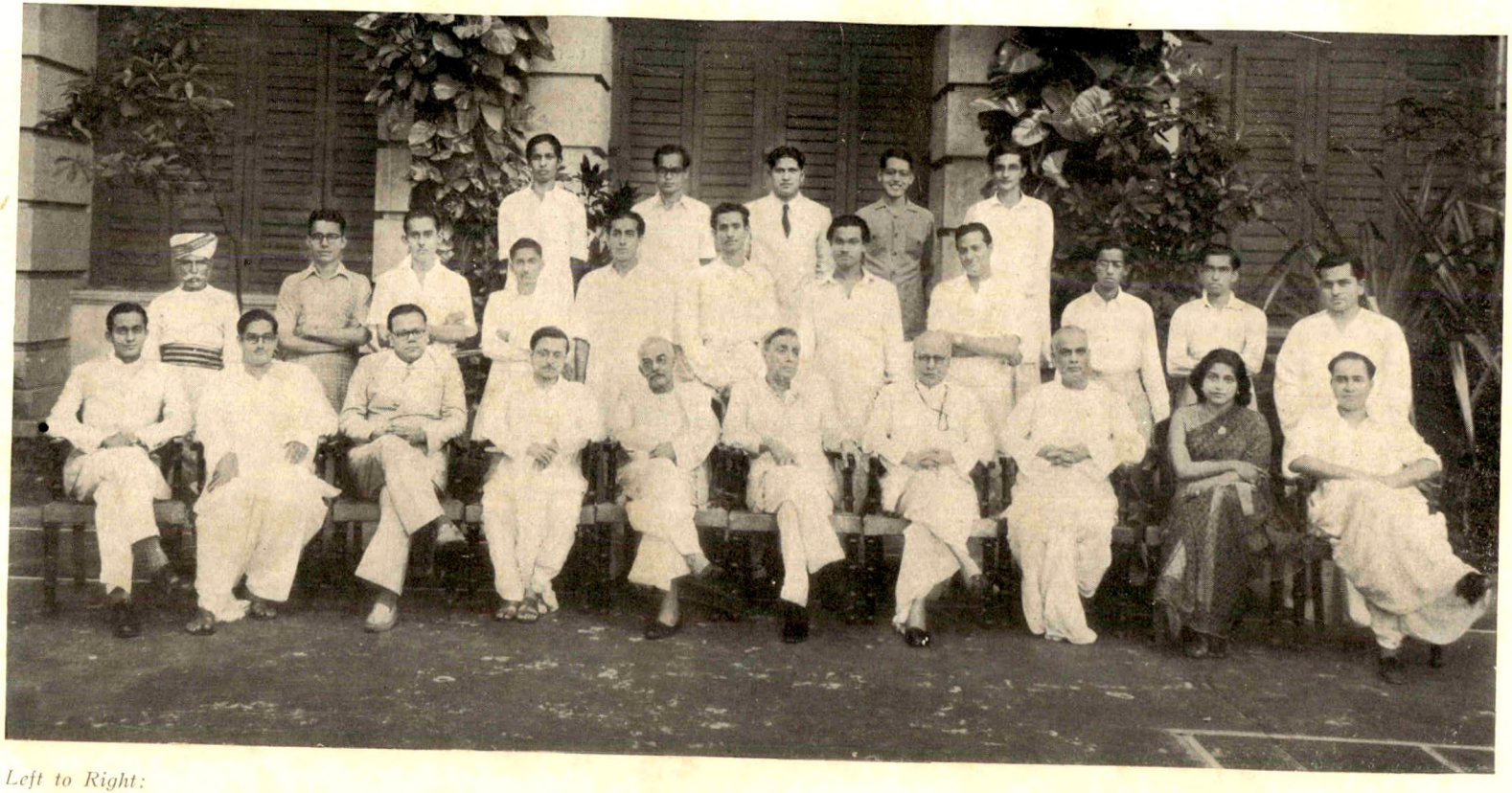

Left to Right:

Sitting:—Chandisadhan Basu, Asoke Krishna Dutt (*General Secretary*), Prof. S. A. Masud (*Vice-President*), Prof. P. C. Chunder (*Vice-President*), Prof. R. M. Majumder (*President*), Hon'ble Mr. Justice S. N. Banerjee (*Vice-Chancellor*), Prof. P. N. Banerjee (*Principal*), Prof. A. C. Karkoon (*Vice-Principal*), Miss. Manjula Roy (*Jt. Secy., Debates*), Gour Kishore Ganguli (*Jt. Secy., Office*).

Standing 1st Row:—Biltu (*Chaprashi*), Deonandan Singh, Amiya K. Ghosh, Santosh K. China (*Jt. Secy., Students' Aid*), Arindrajit Choudhuri, Ajit K. Ghosal (*Jt. Secy., Re-Union*), Sujit Chakravarti, Naoratan Lall Singh (*Jt. Secy., Drama*), Dhananjoy Mitter (*Jt. Secy., Cultural Functions*), Bimal Banerjee (*Jt. Secy., Socials*), Krishna Kumar Pandey.

Standing 2nd Row:—Sudhir Bhattacharjee, Susanta Kumar Ghosh (*Asst. General Secretary*), Ranjit Mohan Buckshee (*Jt. Secy., Re-Union*), Devaprashad Choudhuri (*Jt. Secy., Magazine*), Nirupom Shome.

Absent:—Prof. S. P. Mitter (*Vice-President*), Debangsu Mukherjee.

CALCUTTA UNIVERSITY LAW COLLEGE ATHLETIC CLUB

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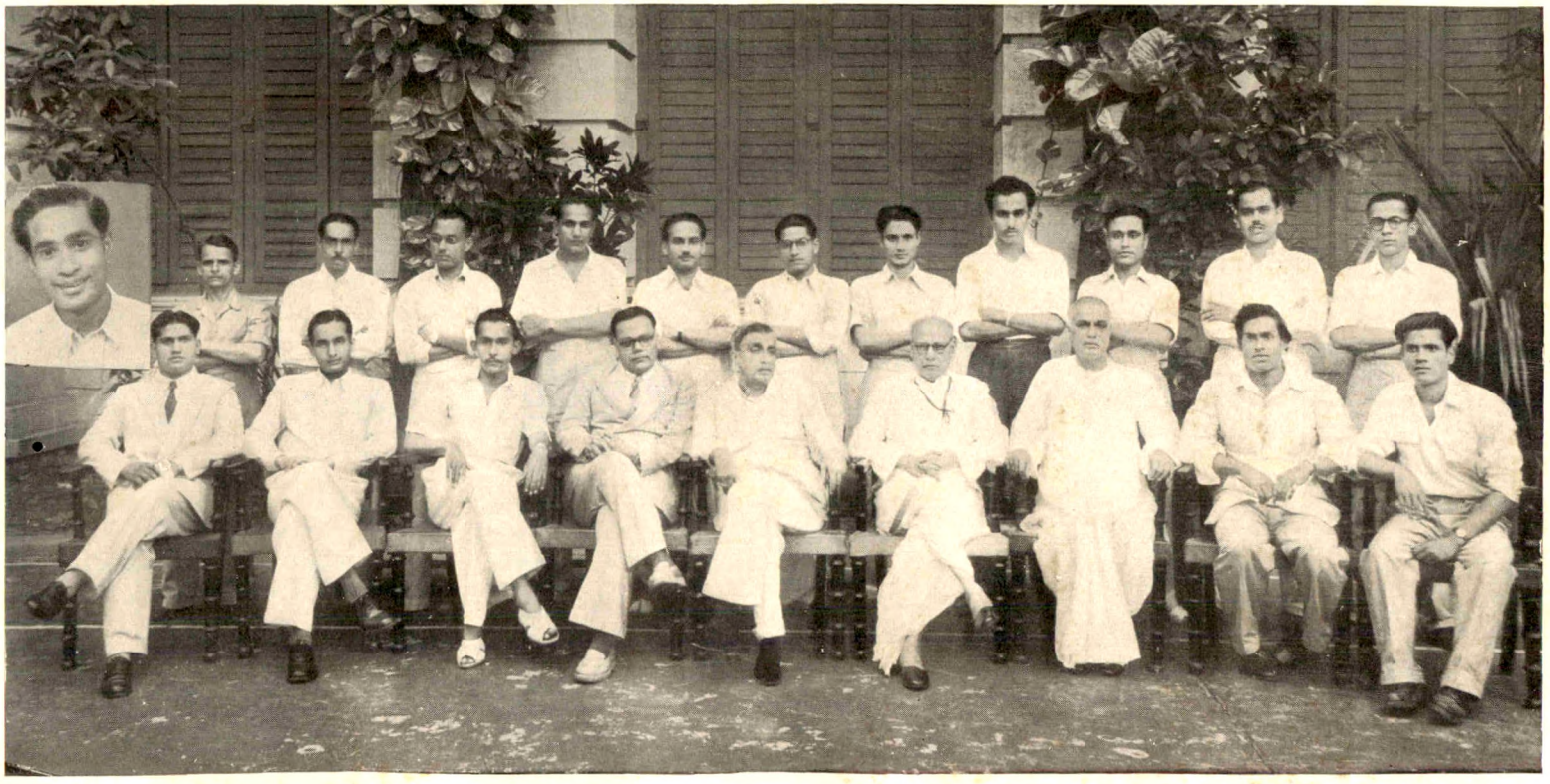

Left to Right:

Sitting:—Ranjit Buckshee (*Capt. Hockey*), Chandisadhan Basu (*Asst. Secy.*), Amiya Ghosh (*Jt. Secy.*), Prof. S. A. Masud, Hon'ble Mr. Justice S. N. Banerjee (*Vice-Chancellor*), Dr. P. N. Banerjee (*Principal*), Prof. A. C. Karkoon (*Vice-Principal*), Monotosh Roy (*Physical Instructor*), Anil Das (*Jt. Secy.*).

Standing:—Parsuram (*Bearer*), Saroj Kumar Chatterjee (*Vice-Capt., Indoor-Games*), Amulya Mukherjee (*Vice-Capt., Football*), Chittaranjan Datta (*Capt., Rowing*), Bharat Chowdhury, Tapas Chandra Mittra (*Capt., Indoor-Games*), Niruddha Gohain (*Capt., Tennis*), Amar Banerjee (*Vice Capt., Cricket*), Probhat Mukherjee (*Capt., Sports*), Manash Roy (*Capt., Cricket*), Jitendra Nath Barua (*Capt., Basketball*). *Inset*—R. Guhathakurata (*Capt., Football*).

University Law College Magazine, Calcutta

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EDITORIAL NOTES

WE REGRET:—

We do very much regret the delayed publication of our magazine. Delayed publication is almost chronic to our magazine and when we regret we do nothing more than join in a chorus that was begun long before by our predecessors in office. But, we do not think that this delay is unavoidable. We put forward a few suggestions which if accepted and acted upon will cure this chronic malady.

First, students will have to contribute money. We do not need much, but, only rupee one per student in each session. We are suggesting nothing odd or novel. Almost all educational institutions collect such a sum for their magazine and unless we do the same, the college magazine will not survive long and will be famished to death.

Secondly, students will have to contribute articles. Articles are the flesh, blood and bone out of which we poor editors can hope to make something. But students will not write; no, they will not. (We send notice, speak to them personally, request them with differential smiles on our lips, beg with folded hands, pray, plead for kindness, cajole, grimace or threaten, but alas, all for nothing. To come round to our point, we just want to assure our friends that unless articles are forthcoming no more issues of the magazine can come out in future.)

Thirdly, we propose that the present system of professor-cum-student editorship should go. A board of editors consisting wholly of students should be formed to take the entire burden of publication. Our professors are, naturally, very busy persons and the least we disturb them, the better it is for all of us. This step will, we hope, be a great one towards early publication.

Fourthly, we would also suggest the restoration of the time-table for the election of the College Union, which is also one of the causes of disorganisation of the Union activities. In this connection we should not fail to take necessary steps even if it leads to the ultimate suspension of the election for a session or so.

Our Felicitations:

We offer our felicitations to our Professor P. N. Mukherjee, who was last November elevated to the Bench. We are all very happy over this appointment and we wish Mr. Justice P. N. Mukherjee long and successful years on the Bench.

We also congratulate Prof. Azizul Haque on his appointment as a member of the Riot Enquiry Commission and also for his election to the Parliament. He was one of the Vice-Presidents of our Union and his popularity amongst the students is well known.

Our warmest congratulations to our fellow-student Sri Jogen Hazarika for his election as a member of Parliament. He is probably the

first student to be so elected, and the youngest of the members of the Parliament. It is a matter of special pride to us and the students of this College.

Our Loss:

We also condole the sad demise of our friend and colleague Sri Sachchidananda Mukherji, a member of the Union Sub-Committee and a sincere worker of our College Union. He has left behind him, his parents, his relations, a host of friends and students to mourn his loss. May his soul rest in peace.

Our Thanks:

We are deeply grateful to our Vice-Principal Sri A. C. Karkoon, Professor R. M. Majumdar and Professor Pratapchandra Chunder, who have helped us so much. We are grateful to the Superintendent, Assistant Superintendent, the staff and the workers of the Calcutta University Press, without whose kind and cordial help the publication of this magazine would have been an impossibility. We are also grateful to Sri Gaurkishore Ganguly, Sri Arindrajit Chaudhuri and Sri Susanta Ghosh, our friends and colleagues, and also others, who have helped us so many times in so many ways.

PRESIDENTIAL ADDRESS AT THE ANNUAL LEGAL CONFERENCE, 1950*

BY

THE HON'BLE CHIEF JUSTICE SIR ARTHUR TREVOR HARRIES

The constitution of India that had been adopted was passed by the representatives of the people. It expressed the will and desire of the people and therefore their approach to it should be to give effect to it rather than defeat it, observed Sir Arthur Trevor Harries, Chief Justice, West Bengal.

Sir Arthur said that many divergent opinions had been expressed regarding some Articles of the Constitution specially on those which had been incorporated from the Government of India Act, 1935. But they must not forget that their constitution was a written document. It was true that the politicians, lawyers and jurists would look into the constitution from different angles, and the Courts were to interpret and give judgment in case of difference. Courts had been made the watch dog. The duty of the Court was to give effect to the constitution wherever possible. But if the executive and the legislatures transgressed and did what they had no right to do according to the constitution Courts would not fail to right the wrong.

The Chief Justice advised the students to master the constitution and qualify themselves in the constitutional law.

* Summary of the Speech as published in the Amrita Bazar Patrika, dated the 30th April, 1950.

PRESIDENTIAL ADDRESS AT THE ALL-BENGAL DEBATE

BY

THE HON'BLE MR. JUSTICE A. N. SEN

I thank the organisers of this debate for the honour they have done me in asking me to preside over this function. It has been a most enjoyable and instructive evening and I think indeed all of us shall go back today, feeling that we have learnt a good deal about that part of the Constitution of India relating to freedom. The debate has been of a high order and I congratulate the speakers.

The topic of the discussion is the Civil liberty of the Citizen of India and to what extent the Constitution Act safeguards it. The provisions of the Act have been discussed at length and I will not tire you with any detailed exposition of them. I must frankly confess that I have not studied the entire Act carefully but I have had something to do with some of its provisions. I propose therefore to leave aside details and give you my general view on such parts of the Act as I have had to deal with.

The Act certainly contains numerous provisions to safeguard freedom. The provisions may not be as comprehensive as some may desire, but I must say at once that it does contain effective and extensive provisions in this regard. I would further emphasise that if the Act is worked in the spirit of the preamble, *viz.*, to secure justice, liberty, equality and fraternity our freedom will be no less safe under the Constitution than it is in other democratic countries.

There is a remarkable advance in our Constitution over the Constitution of England. In England as you know Parliament is supreme; no act of Parliament can be declared *ultra vires*. The Courts in England have no jurisdiction to question the validity of an Act of Parliament, however harsh or unreasonable it may be, because Parliament is Supreme. In India the position is different. Part III of the Act gives the Courts power to declare an existing law as well as any future law *ultra vires* and void, if it is inconsistent with the provisions of Part III which guarantees certain fundamental rights. Although there may have been different views expressed regarding the extent of the court's powers nevertheless there is, I think, a unanimity of opinion that so far as the fundamental rights mentioned in Article 19 are concerned the Courts have the power to declare any law which is inconsistent with these rights as being void to the extent of their inconsistency. This gives the Court great power, power which Judges in India did not have under the British and which Judges in England have not got.

Again the Courts are given powers to issue writs of Habeas Corpus and other prerogative writs. The power of the High Courts in India in respect of Habeas Corpus has been increased. The writ is thus described by Lord Hewart, Chief Justice of England:—

"The writ of Habeas Corpus is a very ancient common law writ, which now issues from the High Court of Justice, directed to any person detaining another, commanding him to produce the body of the person detained before the Court, showing the day and the cause of his detention, to be dealt with as the law requires. The writ accordingly enables any person, who is alleged to be unlawfully detained or imprisoned to be actually produced before the Court, and the cause of his detention inquired into. Unless a legal justification for his detention is shown, the Court will order his immediate release."

I have quoted this passage as I have heard it said that in issuing this writ the Court should not ask for the production in Court of the persons illegally detained. That this view is wrong is apparent from Lord Hewart's observations which must have the greatest weight.

Liberty is not dependent on mere statutory provisions. It is a treasure which cannot be preserved by ink and paper, it must be preserved by the combined determination of the common citizen, the executive, the legislature

and the judiciary to work the Constitution in the spirit of liberty. Conflicts are bound to arise, the solution of such conflicts in favour of liberty will only be possible if the people as a whole are willing to sacrifice and to fight in the cause of liberty. All of us have our part to play in this struggle.

No legislature would dare to persist in passing oppressive laws if the people are vigilant and determined to prevent it. The task of the common citizen is, therefore, to be watchful and to protest against any unwarranted interference with liberty by legislative action or otherwise. You will soon be lawyers and upon you will lie the burden and the privilege of safeguarding freedom. When you see that there is oppression by the executive or bureaucracy you must defend the oppressed. You must fight their cases in Court. If necessary, you must sacrifice your fees and your prospects of preferment. You must study the law carefully and use your expert knowledge to frustrate encroachments on liberty. Cases where the subject is oppressed, must receive precedence. I, therefore, appeal to you to remember, when you are lawyers that your first duty is to the oppressed. That duty you will best perform if you are willing to sacrifice. But sacrifice is not enough. In a fight you must equip yourselves with suitable arms. Your armoury will consist in a sound knowledge of law, especially the law of Constitutional rights. You must also study the technique of advocacy and this can best be done by attending the Courts and listening to able Advocates. Knowledge of law alone will not make you an able advocate. You must study human nature and gain a wide knowledge of the world and its affairs. You must read cases where the great lawyers of the world stood up fearlessly in the cause of liberty. You must study the Judges and gauge their weaknesses and foibles and so conduct yourselves as to bring the judges before whom you appear to a frame of mind favourable to your case. Judges are not machines, they are just human beings with human weaknesses. Some are quick, some slow, some intelligent, some not, you must adjust your advocacy according to the quality of the judge before whom you appear. Always remember that a strong and good bar is necessary for the creation of a strong and good bench. Do not forget that the judgment of a court is not the product of the judge only, it is the product of the joint efforts of the judge and the lawyers advising him.

Again as lawyers some of you will have to advise Government. After all, the ministers and the officials are not experts in law. They have to depend greatly on their legal advisers. It, therefore, behoves the legal advisers of Government to be sound lawyers and above all to give Government honest opinions. A heavy responsibility rests on them. If they are weak they will be prone to give Government such advice as they think would be palatable to Government. They will be afraid that they may lose their posts or their influence with Government, if they advise them honestly when the executive has gone wrong. In my experience I have known of such advice being given, it is not of infrequent occurrence. I have, however, great hopes in the youth of my country. We older people have been brought up in an atmosphere vitiated by subjugation. You will enter upon your duties fresh and as free citizens and I am confident that you will discharge your duties fearlessly and conscientiously. If you do this you will be doing more for liberty than many a statute.

Some of you will one day be Judges. A very heavy responsibility will rest on you, especially, when you deal with conflicts between the executive and the citizen. It is easy to be impartial in cases between citizen and citizen. To decide such cases a good knowledge of law and a certain amount of shrewdness and commonsense is practically all that is required. But the case is different when the whole might of the Executive is opposed to the rights of the citizen, when the executive tries to use its great powers to curtail the liberty of the subject. Other qualities are then required. It is then the duty of the Judge to be meticulously careful to see that liberty is not taken away except in strict accordance with law. If powers of interference are given to the Courts they must freely exercise them and whenever permissible interpret the law in such a way as to extend their powers of granting relief. The Judge in such cases should disregard mere technicality and try and protect the liberty of the subject. He must be fearless and sympathetic and if occasion demands it, he must express in no uncertain terms his disapproval of executive action which is oppressive or unfair. It is not enough for a Judge merely to give his decision as if he were an arbitrator. In giving his decision he must express his disapproval where disapproval is required in language, which is unambiguous and forceful, so that the citizen may feel that there is an authority which is

always ready and zealous to protect him from oppression and so that the executive may realise that any unfair attempt at stifling the liberty of the subject will be prevented and exposed. The duty of a Judge is not only to give relief in a particular case but to so express himself as to deter any person or authority from repeating a wrong. This has been the tradition of the great judges in England which judges here should establish.

There has been a tendency in recent times here and in other parts of the world to depart from the rule of law, to curb the jurisdiction of the Courts and to reduce the dignity and position of Judges. A strong condemnation of this tendency and its exposure will be found in the interesting book, " The New Despotism " written by Lord Hewart, once Chief Justice of England. I would ask you to read this book as it reveals the insidious manner in which the power of Parliament and of the Judges is being undermined by the executive. When you become lawyers or judges you must try and destroy this tendency. In this connection I would like to place before you certain observation of Lord Reading, once Chief Justice of England, in the case of Rex-v-Speyer (1916, 1 K.B. 595, 610). A writ of quo warranto was issued upon two persons to show, by what authority they acted as Privy Councillors. It was argued by the Attorney General, appearing for the Crown that the Court would be powerless to expunge their names from the list of Privy Councillors, as it would be an order upon the Crown which the Crown need not obey and that even if the order were obeyed the Crown could immediately reinstate them and the Court would be powerless to interfere.

In meeting these objections Lord Reading said that they were not of any substance and added:

" Although it may be interesting and useful for the purpose of testing the propositions to assume the difficulties—suggested by the Attorney General, none of them in truth could occur. This is the King's Court, we sit here to administer justice and to interpret the laws of the realm in the King's name. It is respectful and proper to assume that once the law is declared by a competent judicial authority, it will be followed by the Crown."

In another case " Eastern Trust Co., *Vs.* McKenjie Mann & Co., Ltd. (1915 A.C. 750, 759), Sir George Farwell delivering the judgment of the Privy Council said:—

" It is the duty of the Crown and of every branch of the Executive to abide by and obey the law. If there is any difficulty in ascertaining it, the Courts are open to the Crown to sue and it is the duty of the Executive in cases of doubt to ascertain the law, in order to obey it, not to disregard it."

I stress the last few words. The Executive should ascertain the law from the Courts in order to obey it and not to get round it. These words have great significance and they should be remembered by all who wish to secure the liberty of the subject. As I have said before you must remember that the duty of the Judge is not merely to give decisions, but also to expose oppression and injustice when such exposure is necessary.

You will remember, I think, how the divorce laws in England were completely altered as a result of certain caustic remarks of Mr. Justice Maule in a certain case of bigamy.

The prisoner was married to a violent woman, who was also of bad character. His life became unbearable and he left this termagant of an unfaithful wife and married a good gentle and virtuous woman without divorcing his first wife. He did this because the divorce laws were so unfair that he found it impossible to comply with them. He was duly tried by Maule J. for bigamy and duly convicted. Under the law as it then stood, a person who wanted a divorce, had to spend at least £600 in various deposits and fees and had to wait a very long time before a decree was granted. It was really a branch of the ecclesiastical law. The prisoner said that far from having £600 he did not have 600 pence. Justice Maule addressing the prisoner said:—

(I cannot remember the exact words, but they were to this effect):—Prisoner Smith, you could have married your second wife and committed no offence if you had fulfilled certain simple terms. All you were required to do was to spend a sum of £600 and then to wait for a year or two and if you had done this, you would not be guilty of any offence; but you chose the path of crime. You say you did not possess 600 pence, let alone £600. I can take no notice of this fact. The law of the realm makes no difference between the rich and the poor. I must therefore sentence you. I direct that you undergo imprisonment for 3 days and as the assizes have been sitting for five days I direct your release forthwith."

This Satire on the law of divorce had its effect and the law was completely altered. In this way Judges in England have played their part in fashioning the law of the land.

I have referred to these cases to show that in a freedom loving country the Bench, the bar and the people, all combine to promote the cause of liberty. Liberty will not come from the statute book. It is the prize gained by the unremitting efforts of a freedom loving people. Its attainment is accompanied by sacrifice and toil. When the people are determined to get liberty and to sacrifice for it the upsurge will be so great that nothing will be able to quell it. It will sweep aside and destroy all agencies however firmly entrenched which dare to oppose it. When I see your young, eager and intelligent faces I feel confident that you will join heart and soul in the quest for freedom. You are full of vigour and high ideals. Keep up your vigour and strain all your might to realise your ideals. I am a great believer in the youth of this country. I belong to another generation. Although we have not the vigour of youth, we have nevertheless a duty to perform in this quest for freedom and I hope that we of the older generation will be able to contribute something towards the success of your struggle.

MODERN LEGISLATION*

BY

THE HON'BLE MR. JUSTICE P. B. MUKHARJI

The subject that I have chosen for my address to you this afternoon is the problem of Modern Legislation in a Democratic State. On the proper appreciation of this problem depends the success or the failure of democracy itself as an institution and form of Government. Its importance overshadows various other considerations of mere popular criticism.

A modern democratic State is no longer a police state. It is not content merely in protecting and defending its territorial integrity and in preventing and punishing crimes and criminals. It represents today a social order and its aspiration, for good or evil, is to control by legislation the daily life of its individual citizens. President Jefferson of America once remarked " the best Government is that which governs the least." The pendulum has swung violently the other way and the ideal Government which happens to obsess the mind of the modern politician and the statesman is now said to be that which governs the most. So much for the claim of the ideal democrat, who had maintained in the past that democracy is the most perfect instrument for making an individual independent and free, self-reliant and responsible. Men today have to be supported on far too many crutches of legislation. The spectacle of the common man in the democratic state riding on these crutches for the maintenance of his life provokes serious anxiety and reflection for the future. I propose to give you some of my own thoughts on the subject.

The variety of legislation today is bewildering. The output of legislation is enormous in quantity and perplexing in quality. The laws are so many that the legislators themselves cannot keep pace with their own laws and they cannot be accused of the knowledge of the laws that they are making and that the men who are to be regulated and governed by them can never hope to know and in fact do not know what these laws are, although they are supposed to be made for them, and the administrators know less than both. It is difficult in all conscience for the trained lawyers to know these various statutes and it is practically impossible for the citizens to do so. The small businessman or the trader or the entrepreneur or the industrial magnate has during these years been so inundated with Statutes, Orders, Rules and Regulations about every detail of

* Address delivered at the Legal Conference on the 29th April, 1950.

simple buying and selling and of production, transport and distribution that he has long since given up the attempt to know how he stands and acting as reasonably and honestly as he can, he takes his chance of becoming a criminal.

It is often a matter of real and practical difficulty and certainly of extensive and laborious research to discover how the law stands on a particular subject on a particular point. Legal publishers have made gallant and ingenious efforts to keep the profession abreast of all the daily changes in the law but with all the help which he can derive from these sources no lawyer can ever feel sure of his ground in this morass. Magistrates frequently have difficulty in even seeing an order under which a prosecution is brought and even when they do so they never practically see it in relation to the whole series of demi-enactments of which it is a part. The whole tree is never seen but its numerous sprouts and branches. The forest is never seen but the trees. Again and again the issue of a conviction or acquittal may turn on the exact wording of a penal regulation seen in its context against the whole Act but it is seldom possible to make it readily available.

Laws are made to be enforced. They therefore depend on the administrative machinery. The more numerous the laws, the larger is the growth of bureaucracy and of administrative machinery. Watertight administrative machinery is built up to administer specific laws and each machinery works in conflict with others. The inevitable result is lack of all co-ordination and harmony. One department of the administration does not know what another department does, although they may be affecting the same individual citizen. If the different administrative departments meet, then they meet only like billiard balls to strike at one another and rebound in the direction that the incalculable and chance law of tangents will determine. The Factory Inspector will come and tell you how to build your factory according to regulations and when you have built it, the Building Inspector from the Municipality or the Corporation will tell you on pain of penalty to pull down the bulid-ing not being in accordance with the Municipal regulations. I will give you one more illustration from a case which I had to do while at the Bar. Under the rationing laws the Government was required to store foodgrains for its employees. The Postal Department of the Government of India stored some foodgrains for the Postal peons and employees. No sooner had they done so the poor Post Master was faced with a summons for prosecution of having stored them without the Municipal licence required under the Calcutta Municipal Act. It was with considerable difficulty and after seven days of learned arguments before the High Court, where the case finally came up that the unfortunate Post Master could be saved from a conviction. That is result of multiplying laws and setting up unco-ordinated administrative machinery for their execution.

This enormous output of legislation and statutes should be checked in the best interest of good government. Their number today is legion, and misery awaits the people, who have to be served with such legislative surfeit. This country along with the rest of the world is passing through a legislative catharsis and it is a world problem today. It is not peculiarly the problem of India, but is a problem in all the democratic states of the world. In India it is particularly unfortunate as she has yet to build up the great administrative tradition of England and America. Too many laws and too much administrative machinery are bad for any country, but they are worse in India which is just finding her feet in self-government. We have to be specially on our guard against making our laws too many and their administrative machinery too complex at this stage.

Legislation in a modern democracy is a great trust and a still greater responsibility. To execute that trust and to discharge that responsibility, mere good will is not enough. Zeal for reform when there is no need for it, can only serve to deform and not reform Society. Idealism in legislation may be a dangerous embarrassment. The cynical remark of Bernard Shaw that more harm has been done to the world by honest fools than by intelligent rascals is particularly true of legislation. Legislation as a means of reform, social, moral and religious, has not proved a success. The laws against prohibition give you the example of failure of moral reform by legislation. The law permitting widow remarriage is an example of failure of religious or socio-religious reform by legislation. Legislation in a modern democratic state must be understood not as a substitute for reform but at best an expression or manifestation of reform. Once that is understood much of the misdirected idealism in legislation can be canalised for lesser and more effective laws for laying the foundations of national life, in better housing, better public health, better transport, better industrial and commercial and agricultural organisations,

better civics and better rural reorganisation.

I consider there are certain essential requisites for good legislation. First there must be a wise appreciation of the needs of the State. Legislators should not legislate to give vent to their private obsessions or with an eye to the polling booth and winning votes at the next election. The real needs of the country should be carefully examined and investigated and the effect of the proposed legislation should be foreseen with utmost care that is vouchsafed to human nature. If the situation or the needs can be met by changing the law on one point only, then the law should not be changed more than is necessary. Laws are best changed slowly and gradually and not lock stock and barrel. This is not mere conservatism, but practical technique of evolution of life through law. In the race between legislation and public opinion the wise rule always is that legislation should not overrun public opinion. No truer words of wisdom were uttered than those by Mr. Winston Churchill when he said " The business of Parliament is not only to pass legislation, but also to prevent it from being passed."

The second requisite is good draftsmanship. If according to the Bible at the beginning there was the word, I say the beginning of all laws and legislation is the word. Many a legislation with the stamp of high purpose in the preamble have found their shipwreck on the bedrock of the word. Drafting is a matter of immense importance not only to the citizen, who must know the law that governs him, but to the Courts who have to interpret it. The art of draftsmanship consists of a sense of the use of the language together with a knowledge of the technical interpretation which are placed by law on certain forms of language. There must be both simplicity of language and simplicity of scheme in an Act or a Statute. A careful study of the examples and instances of modern legislation is apt to convince one that there is today a complete failure to understand the importance of sound draftsmanship in legislation. There is a dangerous notion of recent origin that the legislature is a body whose main function is only to think beautiful thoughts and adumbrate noble ideals. All those ideals and thoughts like electricity in the air will remain useless unless they can be harnessed to the words.

The result of badly drafted statutes is the need for frequent and constant amendments. No sooner such legislation comes into force, it is found either not to work or not to achieve the purpose it was intended to serve. Legislation soon degenerates into experimentation. This attitude saps all incentive to care and precision when it is known that any omission or ambiguity or positive stupidity can be lightheartedly corrected by amendments. The legislator is thus relieved of responsibility for that anxious forethought which should be an essential part of his function. The first amendment bears the same taint of bad draftsmanship and very soon amendments follow one after another and the process of trial and error continues leading to tremendous waste of administrative machinery and public revenue alike. Very soon we have an Act whose complete picture, it is difficult to get and which is a shapeless mass and a tasselled mosaic of provisos and amendments and explanations and then—when the band of interpretation strikes you have on that mosaic the most wonderful dance of balance of citizens and judges that would shame the most famous ballerinas of the world. But that is not all. These hasty legislations and hastier amendments which they often inspire lead to frequent upheaval and erosion of rights and obligations and strike at the very root of all sense of social security or order. Security or order is the final end and purpose of all law and legislation which fails in this its primordial function stultifies itself. Such a situation is fraught with utmost danger. It breeds disrespect for law which will be the end of all ordered society.

These are some of the problems of modern legislation which demand the immediate attention. What then are the remedies and the solution?

I offer you some of my tentative suggestions which I hope are constructive and which at any rate will provoke further reflection on your part.

First, I suggest that when a legislation is proposed the interests which are going to be affected by such legislation should be heard by a standing committee of the legislators, for exploring not only the desirability of such legislation which very often may be preconditioned by high policy to which the party in power may have committed itself but also for investigating the ways and means of suiting the legislation to the purpose and carefully examining the effect and repercussions in various directions that the proposed legislation might induce. If necessary we should have a parliamentary bar to argue for and against the proposed legislation and placing relevant evidence and data before the

committee of the legislators. This will avoid unnecessary legislation or useless or harmful legislative provisions and will at any rate ensure careful attention and investigation before a law is passed.

Secondly, the whole principle and entire system of drafting legislation require thorough overhauling. There should be a proper drafting staff drawn from persons with qualified legal training of a high and exacting standard and there should be a regular cadre of such service whose members will have to earn the service experience of different departments of both district and secretariat administration. There should also be careful allotment of different statutes for drafting to members of such service who have special experience of the subject-matter of the particular statutes and the selection of the proper draftsman is vital. It is no good for instance in asking someone who has spent most of his time in the districts dealing with agricultural tenures to draft such a statute as the Calcutta Thica Tenancy Act or draft labour legislation affecting urban factories. Money spent in building up such a service and drafting staff will be well spent as it will stop the enormous waste of public money that goes on to-day in the process of legislation by trial and error which I have indicated. I have no illusion to think that a good and trained draftsman will always display and exhibit Solonic qualities in his products but nevertheless I have no doubt such products will not exhibit the sheer disorderliness or madness that very often passes for legislation to-day.

Thirdly, I feel that the Courts are not helped as they should be in adapting law to justice. To-day the Courts and the legislature move on in proud and silent isolation in their mutually exclusive orbits. The penalty is paid both in the wasted effort of production and in the lowered quality of the product. The legislature is informed only casually and intermittently of the needs and problems of the Courts. Having seen some of the recent legislations and some of their recent amendments I have little doubt left in my mind that the legislature does not take the trouble to know the defects of the legislations that are being pointed out by the Courts which have to administer such statutes. It is not enough that the legislature should release a number of statutes every session; it must see what defects are being found by the Courts in administering them and correcting them accordingly. I suggest a permanent and regular channel of communication between the Courts and the legislature manned by representatives from the bench, the bar and the legislature. Without such an agency of co-ordination much of the efficacy and purpose of modern legislation will be lost.

These then are the thoughts that I offer to you at this conference.

I am reminded of that famous remark of Tacitus " The more corrupt the Government, the greater the number of its laws." I view with greater apprehension the growing wilderness of legislation, which, if allowed to develop unchecked, may defeat the whole experiment of political democracy. In the name of all that is good in the government of men and in the name of success of democracy I plead for simpler laws and lesser laws.

SOME ASPECTS OF THE INDIAN CONSTITUTION*

BY

SRI ATULCHANDRA GUPTA, ADVOCATE

Having recently an occasion to speak at Patna on the subject that men and women in India should take the constitution seriously, to the law college students, I shall say that all serious thinking of the constitution must begin by your knowing what the constitution gives. This constitution, to a great extent, is going to shape out lives and destinies for many years to come.

A constitution is the general outline for the general scheme for the work of the government. It may be written or unwritten. In any constitution, there are three machineries through which the constitution operates: the Executive, the Legislature and the Judiciary.

With a very vast area, inhabited by various heterogeneous people, speaking

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different languages, with a matrix of culture, India has a written constitution. Compared with the constitution of other countries, India's constitution is amazingly bulky, without any parallel in the world. With 395 Articles and 8 Schedules, it is a surprise like the Himalayas.

A good constitution must be elastic and change in accordance with circumstances, meets eventualities, without having to undergo the formal process of amendment. The Indian constitution has all these qualities. The Constituent Assembly has refrained from putting a seal of finality and infallibility upon the constitution. It has eschewed the difficult and complicated process of convention and referendum.

While the " constitution does not exist in England " in the sense that it is not written, India has taken a leaf from the U.S.A. in stating in no unambiguous term the different functions of the Executive, Legislative and the Judiciary. While in England the Parliament, with the backing of the majority, may do anything except " making a man a woman." Our constitution clearly demarcates the limitations of each constituent part of the government.

It is not brought out quite clearly in England that the Judiciary is a fundamental part of the constitution. So far as the law goes, the Parliament may abolish the courts. But, in our constitution, this is impossible, for these three (Executive, Legislature and the Judiciary) are parts of our constitution itself and one has as good right to stand on its own legs as the other. Our Parliament cannot abolish the High Courts or the Supreme Court.

Though in most cases we have followed the American constitution, in the matter of relationship between the Executive and the Legislative, we have followed the British Constitution. The majority party of the Legislature is also the party who carry on the government of India through the Cabinet. So the Cabinet represents the majority party in the Legislature itself. In the United States, the Executive is wholly independent of the Legislature and the Judiciary is also equally independent. The separation of powers between the different organs of the state machinery seems to be almost complete. If you divide these three functions and provide that one should not be subordinate to the other, that would be an ideal form of the constitution. It was under that principle that the Convention of 1787 drew up the constitution of the United States, with the result that the Congress make laws but the President administers them. While the President chooses his ministers and carry out the administration, without any what is called " cabinet responsibility," we have not followed that way. While the Cabinet of the President of the U.S.A. may not at all reflect the composition of the Majority Party of the Congress, in India the Executive is ultimately responsible to the Legislature and the Cabinet of the Prime Minister of India must reflect the Majority Party of the Legislature. Unlike the British Parliament, the Indian Parliament cannot pass any laws on any subjects, since the Union List and the State List are clearly demarcated.

To the complaint of Mr. Justice Mukharji that in modern democracy law making is too much and that lesser and simpler laws would be better, I would point out that the idea of old legislation had thoroughly been changed. In the seventeenth century, to introduce compulsory primary education in England, there raged a heated controversy. And even a well-known professor like Herbert Spencer came out with the argument that whether I educate my child or not, it was no business of the state to interfere. All these notions are now obsolete. With the complicated social and economic structure of the society, the function of the state has unthinkably been expanded.

In the drafting of the constitution, you will find out such principles which should not have been in the constitution. I do not quite understand why the constitution copied out Section 32 of the Government of India Act in Article 111 of our constitution and explained that after a Bill is passed by the Parliament, it must go to the President for his sanction. The President may sanction it, may withdraw his sanction, the President may also send it back with his recommendation and he may not at all send it back. To ensure against such possible dead-lock, both the British and U.S.A. have their own measures in their own ways. But we have none. Here the President is the most powerful man in our constitution.

In conclusion, I must say that the most interesting figure in our constitution is the President and that the Law College authorities should arrange a series of lectures on this and other aspects of the constitution.

FUNDAMENTAL RIGHTS*

BY

S. C. MITTER, BARRISTER-AT-LAW

The question of fundamental rights can be studied from three angles: first, the angle of a student of political history; secondly, that of a jurist and thirdly, from the point of view of a practical lawyer. But from whichever aspect you look at it and whatever be the method and manner of approach, throughout our discussion, it must be remembered that one cannot and should not construe the constitution of one country by reference to the constitution of another, unless the language of both is the same and their social background also is the same. At the same time, it is useful to study the evolution of this concept in different periods of human history to be reminded once again that man's mind in all ages and in all countries clings to fundamentals. Plato in his "laws," says "I see that the State in which the law is above the rulers and the rulers are the inferiors of the law has salvation." This idea was adopted and developed in Aristotle's "Politics" (Book III, Chapter 15 and Book IV, Chapter 4).

Next comes the idea of *Jus Naturalis* or natural law and *Jus Gentium* or the law of the nation. Natural law was considered as of supreme value and a kind of criterion by which one has to judge the municipal law.

In the history of Nations, we find that in England till the concept of sovereignty of Parliament, *i.e.*, the King in Parliament came into existence this idea of fundamental right was almost universal.

By way of illustration, we find that from Coke to Blackstone all the Jurists held the idea of primacy of law. Earlier British Jurists like Brackton, Granville, Lyttleton, Fontescue, Thomas Moore and others upheld idea of fundamental law. Thomas Moore who was a Lord Chancellor and the author of 'Utopia' said, for example, that Parliament, should not alter the country's religion which it did under Henry VIII. The idea of Magna Charta is the example *par excellence* of a fundamental right. Coke said of it in 1628 "Magna Charta is such a fellow that he will have no sovereign." Article 39 of the Magna Charta is the keynote of the whole charter. From Magna Charta in 1215 we come to the Petition of Rights in 1628 and then to the Bill of Rights in 1688 which recognized the Supremacy of Parliament and that the king has no power to dispense with or to suspend law and lastly to the Act of Settlement of 1700. These are examples of what came to be considered "Fundamental law" which Parliament can alter theoretically but not practically. I may also point out that the idea of supremacy of law was argued in the famous Shipmoney case in 1637 when Hampden's Counsel said "Lex is Rex" but Finch, C. J. and a majority of the Bench held otherwise and said that the doctrine "Rex is Lex," was a more feasible proposition.

Right up to the eighteenth century, by the third quarter of which the Cabinet system and Parliamentary Government got more or less consolidated, the idea of a fundamental law continued to be promulgated. In order to grasp clearly the implications of 'fundamental rights,' I can refer you to a few chapters of some well-known books which can be studied with profit. I refer you to pages 475 and 477 of the 57 Law Quarterly Review where there is an Article on 'Political Liberty' by Sir William Holdsworth and also to pages 89 to 173 of Harold Laski's Grammar of Politics where he deals with rights, liberty and equality. We may also read a small book on 'Political Ideal' by Burns who in his second chapter on 'Athenian Liberty' at pages 28 to 50 discusses the doctrine of individual liberty. I shall read to you a few lines from this book from page 35. These few lines will illustrate the basis on which the theory of fundamental rights is founded and that is the

* Address delivered at the Legal Conference on the 29th April, 1950.

point I should like to stress in my short address. The passage is as follows:—

> "The first principle of individual liberty was supposed to be the right of each to mind his own business. Thus the supervision of a caste or an individual was abhorrent to the Athenian mind. Tyranny or oligarchy involved spies; and the more intelligent or well-intentioned the tyranny, the more universal and annoying was the watch kept over the individual citizen. But the only possibility, it was found, for preserving the right of each to mind his own business was in claiming the right of all to mind the public business. For even though we are governed for our own good, the rational man prefers to risk evil if he can be certain that whatever he suffers is his own fault."

I shall also refer you to another famous book by Munroe on Governments of Europe at pages 400 to 401 if you are interested in the subject. Here, the learned author deals with the characteristics of liberty, equality and fraternity as they prevailed in the old regime and how that conception changed after the French Revolution in 1789. At page 401 Munroe says this:—

> Liberty, Equality, Fraternity thus became the watchwords of the surging tide which overwhelmed the old regime in 1789. The Revolution began in Paris. On July 14, 1789, the mobs stormed the grim structure known as the Bastile and turned the prisoners loose. Within a few weeks the old order had been levelled to the ground everywhere. A revolutionary government was thereupon set up and a constituent assembly proceeded to clear away the debris. Eventually the king and queen were sent to the guillotine; the institution of nobility was abolished, the Church was disestablished and its land confiscated; all special privileges and immunities were declared at an end; the Gregorian calendar was displaced by a new system of months and years; the country was deluged with paper money (assignats) and the guillotine was kept working overtime.

You may also read the chapter on 'Rule of Law' in Dicey's Law of the Constitution. In England the reality of freedom is everywhere recognised, Magna Carta or no Magna Carta. If you care to study the development of this theory of fundamental rights in the American constitution, I ask you to read a fascinating book called the New History of United States by André Maurois and refer you in particular to pages 190 and 192 and also to the book on Leading Constitutional Decisions by Robert Cushman. I shall read only a few lines at page 190 of this book "New History of United States" just to illustrate how Jefferson, the American President in 1800 whose faith in the American people was no less than his faith in liberty expressed his feeling of alarm at the powers given to the supreme court by the constitution. Jefferson was a man whose words I shall quote here "I have sworn upon the altar of God, eternal hostility against every form of tyranny over the mind of man." And this is the man, a great associate of Washington, who says that 'the great object of my fear is the Federal Judiciary.' This is what he says. (Read at page 190) "His third idea was, etc."

With this genesis and background of 'Fundamental Rights,' remembering how the concept developed in the history of nations, looking centuries back, let us now look at our own constitution.

Articles 12 to 35 deal with Fundamental Rights. Articles 14 to 18 speak of equality of all before law. Article 19 has given rise to controversies almost in all state High Courts and also in the Supreme Court. So I must be very cautious in whatever I say on the interpretation of this Article 19 along with Articles 21 and 22. Now Articles 23 and 24 are based on humanitarian grounds.

Articles 25 to 28 deal with profession and practice and propagation of religion and freedom of conscience. Articles 29 and 30 deal with the right and protection of minorities. Article 31 talks of compulsory acquisition of property. Article 32 tells us of the remedies of enforcement of these rights and the citizen's right to move the Supreme Court. Articles 33 to 35 give the Parliament general power to legislate and to modify these rights.

Article 13 must be subject to Article 35. From a practical lawyer's point of view, Article 19(1*d*), Article 19(5), Articles 21 and 22 and Article 32(1) are the Articles which merit special mention. The different courts in the States have interpreted them and the Supreme Court of India is now seisin of the matter. So on this branch of the topic whatever I may tell you, right or wrong, must necessarily be in the nature of a lawyer's

submission. My propositions shortly are these:—

I. Supreme Court can test the reasonableness of an enactment. Vide Article 32.

II. Court can test whether an enactment is in the interest of the general public or not.

III. Court can test if the enactment is in the interest of a scheduled tribe.

Now comes the question how far can or should the Supreme Court go in testing the reasonableness? On one side there is the voice of the people through the legislature duly elected. Pitted against this, there is the opinion of a Court of law. Now, was it ever intended by this constitution that the opinion of the Court should outweigh or override the opinion of 340 millions as represented in the legislature? The question therefore is what principle should be applied in testing the reasonableness of an enactment? Is the Act justiciable? If the legislature has the power to enact a piece of legislation the matter ends there subject to Court's power to examine it in the light of certain principles.

I. The first principle, it seems to me, is that the enactment must be manifestly unreasonable to such an extent that the Judges honestly believe that the legislature, meeting after election, is not expressing or cannot express the views of the people. In other words, is the enactment manifestly perverse? There is always the presumption of validity of an enactment.

II. The Second principle seems to be that the provisions of the constitution including the rights conferred (e.g. by Article 19) or obligations imposed (e.g. by Article 162 read with list I to item 9 and list II item I of the 7th schedule) and the procedure laid down (e.g. by Article 22) have to be recognised. Articles 352 onwards especially Article 358 deal with cases of emergency. Be it noted, that there are always degrees of emergency. There may be such an emergency which may necessitate a total suspension or a partial suspension of the constitution in certain cases.

III. The third principle is that the legislation impugned must be construed with reference to the culture, the social background, the habits and thought of the people. If a State (and not all India) legislation is impugned in order to test the reasonableness of such legislation, one has to go into the history of both the enactment itself and also of the peoples affected there by international implication, if any.

Now take an illustration. Suppose there is a dispute between India and Pakistan. Assume to-day an Act is passed restricting movement of those Indian citizens who are leaving India. These persons have rights of properties, right to assemble or right to form association. In construing such an Act, reasonableness and/or public interest has to be decided against the background of this dispute. On our own hypothesis, although the Court theoretically has the power to test the reasonableness where an enactment is manifestly unjust or opposed to principles of natural justice, the Court should not test it without reference to the background of that particular dispute. In other words, what I mean is this: on the one hand, there is the right conferred on citizens by article 19 of the Constitution; on the other hand, there is the obligation on the executive to maintain law and order. (See Article 162, 7th Schedule, List I, Item 9 and List II, Item 1.) These two namely right and obligation have to be correlated and harmonized. So I say, why not put a common-sense construction on the articles of the Constitution? Just as article 19 confers right on a citizen, so article 22 confers certain powers on the legislature and article 21 lays down the provision to follow the procedure established by law. Article 21 therefore is the key article: it is the key to Article 22. But I say once again that none of these Articles bearing on Fundamental Rights does say anything new or create any fresh category of legal right. Therefore in conclusion I say, in all humility, that it is superflous to incorporate the provisions of fundamental rights in the Indian Constitution or for the matter of that, in any other constitution, because, first of all so long as there will be civilization, humanity will always regard certain rights as fundamental or inherent and rooted deep in the human mind, whether they are laid down in a piece of paper or a book described as the country's constitution or not, just as in human history, there are and will be operating certain eternal laws. In all things, from the evanescent flame of a match to the age-old peaks of the Himalayas, from the day long life of a butterfly to the 100 years life of a man there are two aspects—something everlasting and the ever changing time and circumstances and the accidents of name and form. These fundamental rights are those everlasting laws which are ingrained in the human mind. But in the ultimate analysis, everything must be left to the good sense of the rulers and the

ruled to the character of the people, if you want proper application of these fundamental rights. Constitution or no Constitution, if the people and leaders of a country do not help one another, learn to obey and to guide properly, to sacrifice or subordinate their self interest for the time being at any rate, and thus to serve their own country and larger humanity through it, each in one's own way, all the talk on fundamental rights will be robbed of all content and become futile. Our leaders and our rulers in order to become the competent mariners of our life will have to carry more ballast than sail, talk less and work more, forget their own comforts and conveniences at least for the time being,—cease to be popularity hunters—they have to love and educate their own people and give them a push upward. The people in their turn also have a duty to their rulers and leaders and to their country: they must learn to obey them in letter and in spirit: their fundamental rights will be their fundamental duties. To develop this outlook all of us must discipline ourselves and see that our vision is not blurred. Let us remember always that behind this doctrine of fundamental rights, lies the basic concept of fundamental duties. Live and let live should be our motto and not despotism, autocracy or anarchy.

Without these adjustments, whatever constitution emerges, here or elsewhere, now or hereafter, the true recognition of 'fundamental rights' will be a distant cry and in their place will remain conflict and discord. To the powers that be, may I say that 'dressed in a little brief authority, pray, do not play fantastic tricks as make the angles weep.' To our common folk may I say, that 'the darkest hour just precedes the dawn.'

POSITION OF THE PRESIDENT OF INDIA*

BY

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I

There seems to exist in the minds of some people some confusion about the real position and powers of the President under the new Constitution of India. Apart from what occasionally appears in the Press on this subject, recently I had an opportunity, at a certain function, of listening to an interesting discourse by an eminent Calcutta lawyer, on the question of the powers of the Indian President. The view this gentleman took of the question appeared to be, to borrow an expression of Maitland[1] used in another connexion, "the traditional lawyer's view"—too technical and legalistic, and therefore, as it happens in constitutional matters, very untrue to fact. Such a strictly legal attitude was only natural for a lawyer to take as, generally speaking, it is rather difficult for the lawyer as such to go beyond the letter of the law on a subject. But in regard to constitutional questions we must, as Bagehot did in his "English Constitution," make a resolute effort, to quote the words of Lord Balfour[2], "to penetrate the legal forms and

* Address delivered at the Law College Legal Conference on the 29th April, 1950.

1 See his *Constitutional History of England*, 1941, p. 415.

2 See his *Introduction* to Bagehot's *English Constitution* (Oxford).

ceremonial trappings " before we can reach the core of the administrative system of a country. That is to say, we must penetrate " through external forms to administrative realities "—through " outward shows " to " inner verities."

Indeed, the Constitution of a country is not to be found in its law alone. It is, as Mr. Amery[3] has stated in reference to the British Constitution, " a blend of formal law, precedent, and tradition." And what Maitland[4] has called " rules of constitutional morality, or the customs or the conventions " of a Constitution, make up a substantial part of it. Let us, for instance, take the case of the British Constitution on which our Constitution has been practically modelled so far as the structure of our Central Executive and its relation to our Parliament are concerned. According to Sidney Low,[5] the British Constitution " is partly law and partly history, and partly ethics, and partly custom, and partly the result of the various influences which are moulding and transforming the whole structure of society, from year to year and one might almost say, from hour to hour." And according to Viscount Bryce[6], it is, like the Constitution of the Roman State, a " mass of precedents, carried in men's memories or recorded in writing, of dicta of lawyers or statesmen, of customs, usages, understandings and beliefs bearing upon the methods of Government, together with a certain number of statutes, some of them containing matters of petty detail, others relating to private just as much as to public law, nearly all of them presupposing and mixed up with precedents and customs, and all of them covered with a parasitic growth of legal decisions and political habits, apart from which the statutes would be almost unworkable, or at any rate quite different in their working from what they really are." We are not, therefore, surprised when Dicey[7] says that " the whole province of the so-called ' constitutional law ' (of England) is a sort of maze in which the wanderer is perplexed by unreality, by antiquarianism, and by conventionalism." Indeed, there is so much of divergence between theory and fact—between the formal and the actual elements—in the Constitution of England that if any student of the Constitution confines his studies only to the formal law of the Constitution, then his study will be totally incomplete and he will form a very erroneous idea about the Constitution and its working. He will, for example, learn from Blackstone's commentaries[8], that "the executive part of Government . . . . is wisely placed in a single hand by the British Constitution for the sake of unanimity, strength, and dispatch. Were it placed in many hands, it would be subject to many wills: many wills, if disunited and drawing different ways, create weakness in a Government . . . . The King of England is, therefore, not only the chief, but properly the sole, magistrate of the nation; all others acting by commission from, and in due subordination to him . . . . The King is considered in domestic affairs . . . . as the fountain of justice, and general conservator of the peace of the Kingdom," etc.

Again, Lord Brougham[9] will tell our enterprising student [10]:—

" The whole executive power (in England) is lodged in the Sovereign; all appointments to offices in the Army and Navy; all movements and disposition of those forces; all negotiation and treaty; the power to form or to break alliances; all nomination to offices, whether held for life or during pleasure; all superintendence over the administration of the civil and the criminal law; all confirmation or remission of sentences; all disbursements of the sums voted by Parliament; all are in the absolute and exclusive possession of the Crown."

Further, our friend will also learn from Gladstone [11]:—

" The Sovereign in England is the symbol of the nation's unity, and the apex of the social structure; the maker (with advice) of the laws; the supreme governor of the Church;

[3] See his " *Thoughts on the Constitution*," p. 1.
[4] See his " *Constitutional History of England*," p. 398.
[5] See his *Governance of England*, pp. 4-5.
[6] See his *Studies in History and Jurisprudence*, Vol. I, pp. 156-57.
[7] See Dicey, *Law of the Constitution*, 8th Ed., p. 77.
[8] See Dicey, *op. cit.*, pp. 6-8.
[9] See Sidney Low, *op. cit.*, pp. 257-58.
[10] The extract is from Brougham's *British Constitution*.
[11] See Sidney Low, *op. cit.*, p. 258.

the fountain of justice; the sole source of honour; the person to whom all military, all naval, all civil service is rendered. The Sovereign owns very large properties; receives and holds, in law, the entire revenue of the State; appoints and dismisses ministers; makes treaties; pardons crime, or abates its punishment; wages war or concludes peace; summons and dissolves the Parliament; exercises these vast powers for the most part without any specified restraint of law; and yet enjoys in regard to these and every other function an absolute immunity from consequences."

Lastly, Bagehot[12] will tell him:—

"It would very much surprise people if they were only told how many things the Queen[13] could do without consulting Parliament .... Not to mention other things, she could disband the army (by law she cannot engage more than a certain number of men, but she is not obliged to engage any men); she could dismiss all the officers, from the General Commanding-in-chief downwards; she could dismiss all the sailors too; she could sell off all our ships of war and all our naval stores; she could make a peace by the sacrifice of Cornwall, and begin a war for the conquest of Brittany. She could make every citizen in the United Kingdom, male or female, a peer; she could make every parish in the United Kingdom a 'University;' she could dismiss most of the civil servants; she could pardon all offenders. In a word, the Queen could by prerogative upset all the action of civil government within the government, could disgrace the nation by a bad war or peace, and could, by disbanding our forces, whether land or sea, leave us defenceless against foreign nations."

These extracts indicate some of the legal powers of the Crown even to-day. They also show that in law the Crown is at the head of the Executive in England. But what is the actual position? As Dicey[14] has shown, "the executive of England is in fact placed in the hands of a Committee called the Cabinet," and "if there be one person in whose single hand the power of the State is placed, that one person is not the King but the chairman of the committee, known as the Prime Minister." Or, as Bagehot has put it in another way, "the ancient theory holds that the Queen is the executive," but the real fact is that the Prime Minister is "the principal executive of the British Constitution, and the sovereign *a cog* in the mechanism." Further, "in theory the King still selects the Ministers of State who are still known as 'His Majesty's Servants,' but "even in the choice of the Prime Minister the Crown is restricted within narrow limits, and in regard to other political appointments the Prime Minister is all-powerful."[15] Thus, although in the eye of the law the executive authority of the Crown is, as Lowell[16] has observed, "very wide, far wider than that of the chief magistrate in many countries," yet the fact is that even what is known as the royal prerogative "is no longer used in accordance with the personal wishes of the sovereign." "By a gradual process," Lowell continues, "his authority has come more and more under the control of his ministers, until it is now almost entirely in the hands of the cabinet, which is responsible to Parliament, and through Parliament to the nation. The cabinet is to-day the mainspring of the whole political system."

Let us again take the case of what is "popularly called, or miscalled," the royal veto on legislation in England—I mean the right of the King to withhold his assent from a Bill passed by Parliament. The theory is that the King still retains, as Maitland[17] has stated, "the power of refusing to legislate"; that "a statute is still very really and truly the King's act;" that "a statute is enacted by the King, by and with the advice and consent of the Lords, Spiritual and Temporal, in Parliament assembled, and by the authority of the same"; and that "without the King's assent, no bill can become law." The fact, however, is that this royal veto, although "legally unimpaired," has "become obsolete in practice," and can no longer be exercised

[12] See his *English Constitution*, Oxford, 1945, pp. 283-84.

[13] When Bagehot wrote his *English Constitution*, Queen Victoria was the actual occupant of the throne in England.

[14] Dicey, *op. cit.*, p. 8.

[15] See Marriott, *English Political Institutions*, 1938, p. 42.

[16] See his *Government of England*, Vol. I, pp. 23-26.

[17] Maitland, *op. cit.*, pp. 189 and 422-23.

except on the advice of the Ministry of the day in certain special circumstances.[18] The last occasion on which the royal assent was withheld, was in 1707, when " Queen Anne refused her assent to a bill for settling the militia in Scotland[19]." The convention has since been well-established that the Crown must, whatever might be the position in law, ordinarily " assent to any bill passed by the two Houses of Parliament, or by the House of Commons under the Parliament Act, 1911." [20] And Bagehot[21] went so far as to remark that the Queen had no legislative veto. " She must sign her own death-warrant if the two Houses (of Parliament) unanimously send it up to her. It is a fiction of the past to ascribe to her legislative power. She has long ceased to have any."

I shall give one more illustration of divergence between theory and fact in the English Constitution. We all know the constitutional position which the Cabinet and the Prime Minister, " the most characteristic," according to Marriott, " of all English political institutions," have long held in England in relation to the Crown and Parliament. But we also know that " like the Prime Minister himself, the Cabinet," as Berriedale Keith[22] has said, " was until recently not recognised as a body either by the common or statute law." As Maitland[23] has put it, the law of England did not recognise them—knew nothing about them. They were certainly not illegal institutions; they were rather " extra-legal " institutions[24]. The existence of the Cabinet received statutory recognition only in the Minsters of the Crown Act, 1937[25]. Even then reference in this Act to the Cabinet is, as Mr. Amery[26] has said, only " oblique." Its constitutional position " rests on convention[27]," and Gladstone's description[28] of it that:—

" It lives and acts simply by understanding, without a single line of written law or constitution to determine its relations to the Monarch, or to the Parliament, or to the nation; or the relations of its members to one another, or to their Head."

is essentially true even now. Similarly, the power of the Prime Minister as such also rests, as Keith[29] has shown, " on no statute." If, in view of all this, any lawyer argued that the Cabinet and the Prime Minister of England had not played, or could not have played, any important role in the working of the English Constitution before their existence, position and powers received any legal recognition, his argument would not, to say the least, be in consonance with facts. It might appear valid in law, but would be quite in conflict with reality. As Gladstone[30] very rightly said in regard to the position of the Prime Minister, " nowhere in the wide world does so great a substance cast so small a shadow; nowhere is there a man who has so much power, with so

18 See Lowell, *op. cit.*, pp. 25-26; also Maitland, *op. cit.*, pp. 422-23.

19 See Erskine May, *Parliamentary Practice*, p. 395.

20 See Dicey, *op. cit.*, p. 25; also Keith, *Constitutional Law* (*Ridge's Constitutional Law of England*), 1946, p. 5.

21 Bagehot, *op. cit.*, p. 51.

22 See Keith, *op. cit.*, p. 151.

23 See Maitland, *op. cit.*, pp. 387 and 402-404.

24 Maitland also observed in reference to the British Cabinet :—

" This certainly is a most curious state of things, that the law should not recognize what we are apt to consider an organ of the state, second only in importance to the parliament."—See Maitland, *op. cit.*, p. 388.

25 This Act also recognised the existence of the Prime Minister for the purposes of his salary and pension.

According to Mr. L. S. Amery (*Thoughts on the Constitution*, p. 1, foot-note 1), the existence of the Prime Minister " was mentioned for the first time in a statute when the Chequers Trust was constituted " in 1917. It is true that "the Prime Minister was granted," as Mr. H. A. L. Fisher has shown, " precedence next after the Archbishop of Canterbury " by a royal warrant, dated December 4th, 1905, but that this warrant did not constitute any office of Prime Minister. It only granted " precedence to the person holding a particular position." See Maitland, *op. cit.*, p. 396, foot-note.

26 See Amery, *op. cit.*, p. 1, foot-note 1.

27 See Keith, *op. cit.*, p. 143.

28 Quoted by Marriott, *op. cit.*, p. 68.

29 See Keith, *op. cit.*, p. 148.

30 See *Gleanings*, i, 244; also Marriott, *op. cit.*, p. 86; also Sidney Low, *op. cit.*, pp. 160-61.

little to show for it in the way of formal title or prerogative."

II

I have so far referred at length to some salient features of the English Constitution. It may be reasonably asked, what is the bearing of all this on the subject-matter of my paper this afternoon, namely, the position of the Indian President? The bearing is very obvious. The system of government we have to-day at the Centre under the new Constitution of India, is, so far as the question of the relation of the Executive to the Legislature is concerned, definitely what is characterised in Political Science as the Cabinet, or the Parliamentary, system of government[31]. It has been modelled upon the system of government obtaining in England to-day. The position of our President is, and was really intended by the authors of our Constitution to be, analogous to that of the Crown in the English Constitution. Like the Crown in England—and I may say, like the French Presidency under the Third and Fourth Republics, but unlike the American Presidency —our Presidency is practically "a convenient working hypothesis[32]," and our President is the ceremonial Head of our quasi-federal parliamentary democracy. "There is certainly no such thing," says Sidney Low[33], "as the English monarchy, as it is represented in the statutes, in the courts of law, and in proclamations, orders in council, and formal documents in general. The government of this country[34] is not that of a semi-divine despot. The Sovereign who is the hereditary and ceremonial head of a parliamentary democracy has many privileges and attributes of the highest importance; but the tremendous powers, technically ascribed to him, he does not possess. They belong to a convenient myth, which is called the Crown.....What it comes to, in effect, is that most of the prerogatives, theoretically belonging to the Crown, are in reality exercised by the Committee of Parliament which is supposed to represent the nation," that is to say, by the Cabinet. Mutatis mutandis, these observations equally apply to the position of our President in relation to his Council of Ministers. Like the King of England—and I may also say, like the President of France under the Third and Fourth Republics—our President is the constitutional Head of our governmental system—its titular chief executive and its "dignified" part; whereas our Council of Ministers at the Centre with the Prime Minister at its head, constitutes, like the Cabinet of Ministers with the Prime Minister at its head in France, or like the Cabinet Council, or simply the Cabinet, "under the presidency of a Prime Minister" in England, our real executive Government. This is the essence and spirit of our Constitution at the Centre, whatever may be the letter of its law.

"In the Draft Constitution[35]," said the Hon'ble Dr. B. R. Ambedkar, Chairman of the Drafting Committee of the Indian Constituent Assembly, on 4th November, 1948, "there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing common between the form of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system of Government. The two are fundamentally different. Under the Presidential system of America, the President is the chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State, but not of the Executive. He represents the Nation, but does not rule the Nation. He is the symbol of the Nation. His place in the administration

31 As Frederic Ogg and Orman Ray have rightly stated (*Introduction to American Government*, 9th Edition, p. 373), "the two terms are used interchangeably, according as one is viewing the system primarily from the side of the executive or from that of the legislature."

32 See Sidney Low, *op. cit.*, p. 255.

33 See *Ibid*, pp. 255-56.

34 *I.e.*, England.

35 Before the Indian Constituent Assembly, in the course of a speech in support of the motion for the consideration of the Draft Constitution.

is that of a ceremonial device on the seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of Administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice; nor can he do any thing without their advice. The President of the United States can dismiss any Secretary at any time. The President of the (Indian) Union has no power to do so, so long as his Ministers command a majority in Parliament."

After the Draft Constitution of India was finally adopted by the Constituent Assembly with such changes therein as the Assembly had thought fit to make, we find a virtual endoserment of the views of Dr. Ambedkar as quoted above, by two other persons who had much to do with the actual framing of the Constitution—I mean Sri S. N. Mukerjee, Joint Secretary, Constituent Assembly and Sri Alladi Krishnaswami Ayyar, a member of the Drafting Committee and a well-known jurist. According to Sri S. N. Mukerjee[36], the form of Government at the Centre is the parliamentary system of Government. The President occupies the same position as the King under the English Constitution..... .....The President will be bound by the advice of his Ministers, his relation with his Ministers being the same as that between the King of England and his Ministers. The authors of the Constitution have not expressly stated in the Constitution that the President in the exercise of his functions is always to act on the advice of his Ministers, but have preferred to leave this to conventions as in the United Kingdom."

And Sri Alladi Krishnaswami Ayyar[37] has told us that, regard being had to the framework of the Constitution of India and its main provisions, the President referred to in its various articles, " will have necessarily to be understood as the President acting on the advice of his Ministers "; that " in not making detailed provisions in regard to the incidents of responsible government, the Constituent Assembly was to a very large extent influenced by the example of England and of the Constitutions of most of the Dominions;" that " any stereotyping of such incidents into a statutory mould will not impart an element of elasticity to the Constitution "; and that the expression " President " in Article 352, etc.,[38] (of the Constitution) has to be understood as referring to the President acting on the advice of his Cabinet (i.e., his Council of Ministers) which is responsible to the Parliament."

I shall now refer to some of the provisions of our Constitution relating to the Office of President and also to his Council of Ministers, and then deal with their legal and political implications. Under the law of the Constitution, the President is to be elected by the members of an electoral College consisting of—

(a) the elected members of both Houses of our Parliament; and

(b) the elected members of the Legislative Assemblies of our States.

The executive power of the (Indian) Union is vested in him and is to be exercised by him either directly or through officers subordinate to him, in accordance with the Constitution. In particular, the supreme command of the Defence Forces of the Union is vested in him, but its exercise is to be regulated by law. He is also otherwise endowed with large powers by the Constitution, into the details of which I need not enter here. But I must mention here that all executive action of the Government of India is to be " expressed to be taken " in his name. He is required, however, to take an oath that he will faithfully execute the office of President and will, to the best of his abilities, " preserve, protect and defend the Constitution and the law," and that he will devote himself " to the service and well-being of the people of India." If we now go beyond the " external forms " or " outward shows " to the " inner verities " of the Constitution, we shall find that, although the Constitution has vested extensive powers in the President,

[36] See his article in *Amrita Bazar Patrika, Republic India Supplement*, January 26, 1950; also in *The Hindu* of January 26, 1950.

[37] See his article in *Amrita Bazar Patrika, Republic India Supplement*, January 26, 1950.

[38] *I.e.*, the Emergency Provisions in our Constitution.

these powers, so far as he himself is concerned, are, in view of the nature of our system of government at the Centre as previously shown, really formal or nominal. The Constitution has laid down—

(a) in Clause (1) of Article 74, that " there shall be a Council of Ministers with the Prime Minister at their head to aid and advise the President in the exercise of his functions";

(b) in Clause (3) of Article 75, that " the Council of Ministers shall be collectively responsible to the House of the People " (i.e., the Lower House of our Parliament);

(c) in Clause (5) of Article 75, that " a Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister "; and

(d) in Article 78, that it " shall be the duty of the Prime Minister—

(i) " to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation ";

(ii) " to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(iii) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council."

The Constitution has also laid down that the Prime Minister is to be appointed by the President; that the other Ministers are to be appointed by the latter on the advice of the Prime Minister; and that the Ministers are to hold office during the pleasure of the President. The last thing means that the Ministers are, technically speaking, liable to dismissal by the President at his discretion.

This is the position in law. But in actual practice and in the context of the principles of of the Cabinet system of Government professedly adopted for our Centre, the choice of the Prime Minister is necessarily limited, as in England, by the exigencies of party politics and by other political factors. The Prime Minister must be a person who " must be able to secure colleagues and, with his colleagues," must be in a position to command the confidence of the House of the People. Further, the expression " aid and advise " in Clause (1) of Article 74 as quoted above, is a constitutional euphemism[39]. To my mind, it has been used, in pursuance of the past practice[40], both for the maintenance of the outward dignity of the office of President and for avoiding some practical difficulties of a constitutional character which might arise if there were any statutory provision requiring the President to consult his Council of Ministers and accept their advice in all circumstances[41]. Moreover, the expression as it is, would impart some flexibility to our Constitution and leave the question of relationship between the President and his Council of Ministers to be regulated by conventions, as in England. The constitutional implication of the present position, therefore, is that so long as the Council of Ministers command the confidence of the majority of the House of the People, the President must accept the advice of his Ministers on all questions to which they attach any importance, or he must dismiss them and be prepared to face the consequences. In England, the King's

[39] See in this connexion Sri Alladi Krishnaswami Ayyar's article in *Amrita Bazar Patrika*, already referred to. He also stated :—

" Apart from the fact (that), it would be impossible for the President to work any of the provisions in the Constitution without reference to, and independently of, his Ministers, he would be guilty of violating the Constitution if he purports (*sic*) to act without reference to, and independently of their advice, and he may easily bring himself under the Article relating to penalties imposed upon him for violating the Constitution."—See *Ibid.*

[40] See Sections 9 and 50 of the Government of India Act, 1935, either as originally enacted, or as subsequently adapted under the Indian Independence Act, 1947.

[41] For example, it would be very awkward, if any advice of an outgoing Council of Ministers as to who should form the incoming Council of Ministers were to be legally binding upon the President. The President in that case would have no discretion left in the matter.

In England " it is now absolutely clear," writes Keith, " that for any executive or legislative action of the Crown, some Minister or the Cabinet must be responsible. This doctrine does not, of course, mean that the King does not in fact take decisions of his own in cases where conflicting courses are open, *i.e.*, in the vital case of the termination and formation of ministries. See Keith, *op. cit.*, p. 160.

servants (i.e., his Ministers), says Sir William Anson, " are entitled to his full confidence... .....he should accept their advice when offered by them as a Cabinet, and support them while they remain his servants." " A Sovereign of this Country," he continues,, " either accepts the advice of his Ministers in any matter to which they attach importance, or must dismiss them[42]." Now if our President dismisses a Council of Ministers which still command the confidence of the House of the People, or if the Council of Ministers resign as a protest against the conduct of the President, the President must find an alternative Council of Ministers who will be willing to adopt his policy and assume responsibility for it. But this new Council may not be able, as is very likely in the particular circumstances, to command the confidence of the House of the People. This means a constitutional crisis with serious administrative implications. The President, however, may on the advice of his new Council, certainly go the length of dissolving the House of the People and ordering a general election. But what will happen if the verdict of the electorate goes against the policy of the President and that of his new Council of Ministers? This will then mean that his Council of Ministers will still fail to command the confidence of the majority of the House of the People, and that the latter may pass a vote of want of confidence in the Council. If, after all this, the President is foolish enough to retain the Council of Ministers in office, the House of the People may, as a protest against this, refuse to grant necessary supplies in repect of the votable items of Central expenditure. This will mean a complete deadlock and a consequential paralysis in the Central Administration. Besides, a President who will deliberately disregard the traditional maxims of the parliamentary system of government and thus violate the spirit of our Constitution, will seriously run the risk of impeachment and removal from office, as provided for in the Constitution. And it should be remembered here that this impeachment business would not be a regular judicial trial in a Court of Law, but really a political affair in a Legislature. And that means much. Indeed, the President of India is not, cannot be, and was not either intended by the authors of our Constitution to be, a dictator or an autocrat in any circumstances, as some people erroneously think. He is simply the constitutional Head of a Democracy formed on parliamentary lines.

It may be asked: Have we got the traditions of the parliamentary system of government in our Country? To this my reply is: Yes, we have. We had, before the 15th of August, 1947, become, to a considerable extent, familiar with the working of the parliamentary system of government in this country ever since the introduction of the Montagu-Chelmsford Reforms. And on the 15th of August, 1947, when India became a Dominion, the principles of the parliamentary form of government were fully and definitely established in our country, and the Governor-General of India became, as in any other Dominion, a purely constitutional Head of the Government of India. As Prime Minister Attlee stated in the House of Commons in connexion with the Indian Independence Bill, 1947, as constitutional Governor-General, he was to act on the advice of his Ministers in all matters. This state of things continued till the inauguration of the present constitution of India. In a sense, the President succeeded, so far as the question of the relationship between the " dignified " part and the " efficient " part of our constitutional machinery is concerned, to the traditions set up by the Governor-General of the Dominion of India. He is the Head of our State: but his Prime Minister is the Head of our Central Government. He stands, to borrow Professor Ernest Barker's language used in another connexion, immune, like the British Monarch, " from criticism, from challange, and from dispute." " Responsibility, criticism, challenge, and the danger of dismissal, are," as in the case of England, transferred to his Prime Minister[43].

[42] See Anson, *The Law and Custom of the Constitution*, Volume II, Part 1, 1935, pp. 139-41.
Also Maitland, *op. cit.*, p. 399 :—
" The King must govern by the advice of his Ministers, who are approved by the House of Commons."
Also Lowell, *op. cit.*, p. 31 :—
" The Cabinet must carry out its own policy; and to that policy the Crown must submit."
Also Jennings (*Cabinet Government*, p. 264) has said that although " an able monarch can have considerable influence in the policy of the Government," yet " he must, in the last resort, accept a Cabinet decision."

[43] See Barker's *Essays on Government*, pp. 3-4.

In conclusion, I should like to say that, although our President will not have any real power, he will certainly not be merely a "magnificent cipher" in our constitutional system. He will surely exercise a considerable influence over the course of our administration. This influence will be derived, partly from his position as the elected Head of our State and as the Supreme Commander of our Defence Forces, and partly from his being the symbol of our national unity. His influence will be really great if, added to these, he has a sterling character and a magnetic personality, and a record of devoted service to our country. Further, he will have, like the British Monarch, a right to early information about the state affairs in the country, "the right to be consulted, the right to encourage and the right to warn[44]." And this will also mean a good deal. But influence is one thing, and power is another. Even then, if his influence is to be really wholesome and effective, he must be "above the play of party," must forget all his past political affiliations if he had any and thus free himself from all party ties, avoid all "meddlesome obstructiveness," always act with a "complete constitutional rectitude and impartiality," and play the role of "a dignified emollient," in our constitutional mechanism. And this neutrality will be his chief source of strength and influence. Let us sincerely hope and trust that our first President will set up, by his political conduct, an exemplary standard as the constitutional head of the Indian Republic.

LABOUR RELATIONS IN INDIA *

BY

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The problem of labour relations must have appeared to most of us to-day as a serious problem awaiting a satisfactory solution. On opening the morning newspaper the reader is usually confronted with news of some kind of labour trouble at one or more places in this country as well as in countries in other parts of the world. We are sometimes horrified at the news of unspeakable violence indulged in by groups of men in moments of extra-ordinary excitement. People have begun to wonder what all this labour unrest, sometimes leading to mad violence, may be due to, and further what the real remedy is likely to be. Labour relations must necessarily be conceived as a part of the wider human relations. The concept of freedom creates the urge for seeking opportunities of leading better and freer lives in the minds of all elements of humanity not excluding labour. A sort of struggle emerges out of the inability of all groups of humanity to accommodate themselves to the idea of giving equal opportunities to all. In the midst of the struggle, which should have been peaceful from the idealistic point of view, some happen to overstep the boundaries of decent and reasonable behaviour, and animal violence may sometimes be the consequence. We have the misfortune of witnessing instances in which boundaries of decency

[44] See Keith, *op. cit.*, p. 157; also Bagehot, *op. cit.*, p. 67.

* Address delivered at the Legal Conference, 1949.

and reasonableness have been overstepped. Something must, however, be done, and necessary steps must be taken by governmental, cultural, and other organisations to stem the tide of disruption, so that all elements of the community as a whole, including employers, employees, and all others, may get the fullest opportunity of living their lives in peace leading to a condition of spiritual and material uplift for all. At the same time the concept of freedom cannot be sacrificed, as freedom must necessarily be conceived as an asset to be shared by all elements of the population.

In this connection it will be pertinent to refer to what is known as the Philadelphia Charter which incorporates a declaration of the aims and purposes of the International Labour Organisation, as adopted by the general conference of the organisation in its 26th Session held in Philadelphia in May, 1944. The conference reaffirmed certain fundamental principles on the following lines:—(a) Labour is not a commodity; (b) freedom of expression and of association are essential to sustained progress; (c) Poverty anywhere constitutes a danger to prosperity everywhere; (d) the war against want requires to be carried on with unrelenting vigour within each nation and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of Governments, join with them in free discussion and democratic decision with a view to the promotion of common welfare. Believing that lasting peace could be established only if it was based on social justice, the conference further affirmed, among other things, that all human beings irrespective of race, creed or sex, had the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity of economic security and equal opportunity. The conference also decided to further among the nations of the world programmes which would achieve, among other things, (a) full employment and the raising of standards of living; (b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and making their greatest contribution to the common well-being; (c) the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures.

The principles enunciated above are being adopted as far as practicable in the civilized, and particularly the industrialised countries of the world. Our country having been more or less backward industrially, has been comparatively slow to adopt measures of labour legislation. The right of collective bargaining has, however, been recognised for a substantial length of time in this country and trade unionism began to be recognised in the early twenties of this Century. In 1921 the Government of India accepted a resolution of the Legislative Assembly to take steps for the introduction of such legislation as might be necessary for registration and protection of trade unions. Eventually the Indian Trade Unions Act (Act XVI of 1926) came into force on 1st June, 1927. Under the provisions of the Act trade unions have been given a legal and corporate status. Under section 17 of the Act no officer or member of a registered trade union shall be liable to punishment under Section 120 B of the Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in section 15, unless the agreement is an agreement to commit an offence. Under Section 18 of the Act no suit or other legal proceedings shall be maintainable in any Civil Court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment or that it is in interference with the trade business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills. The Indian Trade Unions Act has been recently amended by the Trade Unions Amendment Act XLV of 1947. The amended Act provides for compulsory recognition by employers of trade unions on the fulfilment of certain conditions and defines certain unfair practices on the part of recognised trade unions and also of employers. Under Section 28 K of the amended Act, the following, among other things, shall be deemed to be unfair practices on the part of an employer, namely, (a) to interfere with, restrain, or coerce his workmen in the exercise of their rights to organise, form, join or assist a trade union and to engage in concerted activities for the purpose of mutual aid or protection; (b) to interfere with the formation or administration of any trade union or to

contribute financial or other support to it; (c) to discharge or otherwise discriminate against, any officer of a recognised trade union because of his being such officer. It is clear, therefore, that along with the right of collective bargaining the right to organise, form, join or assist a trade union and to engage in concerted activities for the purpose of mutual aid or protection has been legally recognised. This recognition carries with it a recognition of the right to strike, except for certain restrictions under certain circumstances as may be provided for under the law. The weapon of going on strike for the purpose of agitating grievances is therefore a legally recognised weapon except under circumstances of restriction and prohibition explicitly provided for by the law. The majority of strikes, therefore, can be and usually are legal and regular strikes. The question, therefore, pertinently arises as to whether conditions should be allowed to exist or to come into being under which labour may be tempted, in the pursuit of its concerted activities, to wield the weapon of strike at any time and every time. It goes without saying that a strike serves to impede production in manufacturing concerns, to adversely affect the national wealth, and to disrupt labour relations and to dislocate business wherever they occur. Strikes in large transport undertaking like railways are likely to shake the entire economic structure of the country, in the matter of supply of food and essential commodities for the population, and to put out of gear the entire system of movement of people and goods, and thus to bring about a complete chaos for all elements of the population. The question pre-eminently arises as to whether strikes, though legal weapons, should be allowed to be wielded under all circumstances. The answer to this query must necessarily be that strikes should be avoided as far as practicable in the interest not only of the employers and employees concerned but of the community as a whole.

That is no doubt the reason why in the tripartite conference convened by the Hon'ble Minister for Industry and Supply, Government of India, at New Delhi in December 1947, the representatives of the Central, Provincial and State Governments and of employers and workers met to discuss some urgent problems relating to industries and labour and came to pass the resolution on industrial truce. The following may be usefully quoted from the text of the resolution:—"This conference considers that the increase in industrial production, which is so vital to the economy of the country, cannot be achieved without the fullest co-operation between labour and management and stable and friendly relations between them. The employer must recognise the proper role of labour in industry and the need to secure for labour fair wages and working conditions; labour for its part must give equal recognition to its duty in contributing to the increase of the national income without which a permanent rise in the general standard of living cannot be achieved. Mutual discussion of all problems common to both and a determination to settle all disputes without recourse to interruption in or slowing down of production should be the common aim of employers and labour. The system of regulation of capital as well as labour must be so devised that while in the interests of consumers and the primary producers excessive profits should be prevented by suitable measures of taxation and otherwise both will share the product of their common effort after making provision for payment of fair wages to labour, a fair return on capital employed in the industry and reasonable reserves for the maintenance and expansion of the undertaking. For attaining these objectives the conference recommends, among other things, that the fullest use should be made of statutory and other machinery for the resolution of industrial disputes in a just and peaceful manner."

It may be asked at this stage what is the machinery for the resolution of industrial disputes in a just and peaceful manner. In this connection it may be pertinent to note briefly the progress of industrial disputes legislation in this country. The first Indian Trade Disputes Act VI of 1929 came into force from May, 1929. That Act authorised the Central and Provincial Governments to establish Boards of Conciliation or Courts of Inquiry to investigate and settle industrial disputes when they arose or were apprehended. The Trade Disputes Act was amended from time to time, but the idea of compulsory arbitration was not yet adopted. The second World War, however, necessitated the adoption by the Central Government of certain emergency measures concerning industrial disputes, and by adding Rule 81 A to the Defence of India Rules the Central Government, and subsequently the Provincial Governments, were empowered to make general or special orders to prohibit strikes or lock-outs, to refer industrial disputes for conciliation or adjudication, and to enforce the

decisions of Adjudicators. The idea of compulsory arbitration by Adjudicators was thus introduced as a war time measure. The principle of compulsory arbitration, however, came to stay, after the lapsing of Rule 81 A of the Defence of India Rules which empowered the Government to refer industrial disputes to Adjudicators and to enforce their Awards. The present Industrial Disputes Act XIV of 1947, which came into force from the 1st April, 1947, was eventually enacted for making provisions for the investigation and settlement of industrial disputes. To that end the present Act provides the setting up of different authorities the nature of which may be briefly noted here. Under Section 3 of the Act and the rules framed thereunder, in the case of any industrial establishment in which 100* or more workmen are employed or have been employed on any day in the preceding 12 months the appropriate Government may by general or special order require the employer to constitute a Works Committee consisting of representatives of employers and workmen of equal numbers, the total number of members not exceeding 20. Under the section of the Act it shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen, and to that end to comment upon matters of their common interest and concern and endeavour to compose any material difference of opinion in respect of such matters. Section 4 of the Act provides for the appointment of Conciliation Officers charged with the duty of mediating in and promoting the settlement of industrial disputes. Section 5 of the Act provides for the constitution of a Board of Conciliation for promoting the settlement of an industrial dispute. The Chairman of a Board of Conciliation shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute. Under Section 6 of the Act the appropriate Government may constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute. The authorities mentioned so far are not authorised to undertake any work of compulsory arbitration. The principle of compulsory arbitration, which was adopted as a war time measure, has for the first time been statutorily recognised under the present Industrial Disputes Act. Under section 7 of the Act the Government may constitute Industrial Tribunals for the adjudication of industrial disputes. An Industrial Tribunal may consist of one or more members, every member being an independent person who is or has been a Judge of a High Court or a District Judge or is qualified for appointment as a Judge of a High Court. It may be asked whether the law regarding compulsory arbitration serves to interfere with the freedom of individuals. As already noticed interruption of business, productive or otherwise, by way of strikes causes inconvenience not only to the employers and workers concerned, but may cause serious dislocation of the life of the community as a whole in its different phases. Civilised States, therefore, have come to recognise that it is the duty of the State to interfere by introducing legislation regarding compulsory arbitration for effecting peaceful settlement of industrial disputes. The entire idea of the Act is to attain industrial peace without causing dislocation of production and disruption of labour relations, for the benefit not only of the individual employers and workers concerned but of the community as a whole, for whose welfare the State should legitimately recognise its responsibility. An award of an Industrial Tribunal shall ordinarily be declared by the appropriate Government to be binding on all parties to the industrial dispute, and shall, within a period of one month from the date of receipt by the appropriate Government, be published in such a manner as it thinks fit. A settlement arrived at in the course of conciliation proceedings under the Act shall also be binding on all parties to the industrial dispute. Section 29 of the Act provides for a penalty in respect of any person who commits a breach of any term of any settlement or award which has been declared to be binding on him under the Act. Under the present Act there is no provision for any appeal against an Award given by an Industrial Tribunal. The entire law relating to labour relations is likely to be amended in the near future and there is a possibility of setting up centralised Appellate Tribunals which are likely to be constituted on a regional basis. One may be tempted to ask how far these authorities set up under the present Industrial Disputes Act have served the purpose of settling industrial disputes in a peaceful manner. It cannot be said that strikes are not taking place even to-day or that violence, sometimes of an abominable character, is not being resorted to. Statutory authorities set up under the Act do not exercise any

control over the psychology of groups of individuals and their leaders: All human machinery will continue to be less effective than what may be theoretically expected in so far as such machinery has little or no relationship with the manner in which psychology of a complex character governs the minds of men. It is correct to say that the different parts of the statutory machinery set up under the Act are serving to induce the parties concerned to put aside the weapon of strike in many cases, and to that extent the provisions of the Act must be considered as serving a very useful purpose. Mere statutory enactment, however, can never serve as a panacea for all the evils that we are suffering from to-day. It is up to our leaders of thought to inaugurate measures for instilling into the minds of men the proper psychology and the correct outlook on life, so that the citizen of this country may imbibe a spirit of serving the environment and not only working in the service of the self. This applies to both the employers and the employees. Both should be able to realise that neither can exist without the other, and the welfare of each is bound up intrinsically with that of the other. Most of the evils resulting in unseemly conflict can be resolved if we, as the inheritors of a glorious ancient culture can bring about a reorientation of our outlook on life in conformity with our noble heritage which teaches man to serve the self by uplifting the entire environment round about the self. Selfishness, whether in an employer or in an employee or in anybody else, seems to be at the root of all the evils which are responsible for the dismal situation prevailing in our country today. To put the thing in a nutshell, this country, like many other countries of the outside world, is suffering from a pernicious spiritual malady. For the eradication of this malady we the people of India need not necessarily cast our eyes for inspiration from Washington or Moscow, as the remedy lies in the unique store-house of experience and knowledge bequeathed to us by the ancient sages and seers of our country. It is probable that none of the ' isms ' that are holding the field in the outside world to-day will really help humanity, and a day may come when India will rediscover the key and will open the door of her store-house of remedies for the benefit of all mankind. As a first step we the citizens of India need a reorientation of our psychology in our day-to-day behaviour with all around us, and let us hope that we shall in no time be worthy of our noble heritage.

THE LAW OF CARRIERS

BY

PROF. SITARAM BANERJEE, M.A., B.L.

In this Chapter I propose to discuss some of the leading events and decisions which have led up to the present law in England governing the liability of the carriers. We have referred to the leading case of Coggs *V.* Bernard decided by Lord Chief Justice Holt in 1703. In his decision the learned Chief Justice tried to clarify the law relating to carriers in particular and to all classes of bailees in general. The case, of course, was a case relating to a carrier but the law laid down was in very general terms and one would be inclined to say that the learned Chief Justice's observations relating to the other classes of bailees were in the nature of an *obiter.* In the decision, a distinction was made between bailees for reward exercising a public employment such as common carriers, common hoymen, masters of ships and all other bailees. The strict rule of law relating to liability as ennuciated in South-cote's case was not to apply to an ordinary bailee who was required only " to do the best he can ".

As regards public carriers and all persons

engaged in public employment the law was laid down as follows:—" As to the fifth sort of bailment *viz.*, a delivery to carry or otherwise manage, for a reward to be paid to the bailee, those cases are of two sorts, either a delivery to one that exercises a public employment, or a delivery to a private person. First, if it be to a person of the first sort, and he is to have a reward, he is bound to answer for the goods at all events. And this is the case of the common carrier, common hoyman, master of a ship etc. The case of a master of a ship was first adjudged in the case of Morse V. Slue. The law charges this person thus entrusted to carry goods, against all events but acts of God, and of enemies of the king. For though the force be never so great as if an irresistible multitude of people should rob him, nevertheless he is chargeable. And this is a police establishment, contrived by the policy of the law, for the safety of all persons, the necessity of whose affairs obliges them to trust these sorts of persons, that they may be safe in their ways of dealing, for else these carriers might have an opportunity of undoing all persons that had any dealings with them, by combining with thieves etc., and yet doing it in such a clandestine way, as would not be possible to be discovered. And this is the reason the law is founded upon in that way ". I have already told you how considerations of public policy came to modify the law and extend the liability of the public carrier. Probably, this also is the first case in which the expression ' Act of God ' in such connection was used and was mentioned as an exemption from liability. You will find that the subsequent history of carrier's liability very much depended upon the interpretation given to this expression ' Act of God '. No exact definition of ' Act of God ', was supplied by Lord Holt and we shall see that Lord Mansfield and the later judges gave this expression a much more limited meaning than Lord Holt did.

The first stage in the later development of the history of the carrier's liability is the fusion of legal ideas relating to carriers by land and carriers by sea. This probably was the inevitable consequence of the administration of law merchant and trial of maritime cases by the courts of common law. At the time of Lord Mansfield while arguing the case of proprietors of the Trent Navigation V. Wood (1) (1785) 3 Esp. 127. The counsel were unable to mention any case in which a distinction had been made between a land carrier and a water carrier and it was judicially laid down that " there is no distinction between a land and a water carrier ". The denotation of the word " common carrier " was not very much in dispute. It was taken to include the owners of stage coaches and stage wagons, truck men, carters and porters who undertook to carry goods for consideration or hire as a common employment from one place to another; the owners and masters of ships and steam boats engaged in the carriage of goods for hire, lightermen, bargemen, ferrymen and all such persons similarly employed. You will notice that carriage by railway came in later to be included in the category. All these people were denominated as common carriers and were treated by the courts as being subject to the same degree of responsibility and liability. It is still an open question, as we shall see later, as to whether a person regularly maintaining an air service between particular places and who carries goods of all persons for hire, is subject to the same law as the other public carriers.

We shall now notice and discuss one very important feature in the development of the law of carriers and that is the demarcation of the common carrier from other kinds of bailees exercising a public employment. I have already told you that Lord Holt's observations regarding all sorts of bailees are in the nature of an obiter and therefore could not have the same authority in respect of the liability of the other kinds of bailees following a public employment. Lord Holt in Coggs V. Bernard, founded the special liability of the public carrier practically on considerations of public policy. The consignor or the merchant had to be protected from any possible collusion between a carrier and thieves and that protection could be secured only by fixing special responsibility upon the common carrier. But could the same consideration apply to all kinds of bailees ? Obviously not. This came to be realised after the decision of Lord Holt. Not immediately, for we find, Mr. Justice Blackstone in the sixties of the 18th century reproducing the earlier common law and treating all who undertook a public employment, trust or duty, as subject to the obligations or duties of the employment. The statement reminds one, indeed, of the status of the bailee as such. An innkeeper, of course, a common innkeeper had to secure his guests' properties from robbery and theft while in his inn; a common carrier or bargemaster was responsible for the goods he carried—nay even a common tailor or other

workmen or artisan, who holds himself out as such, was required to perform his business in a work-man-like manner. Even Lord Mansfield, in a case decided so late as in 1772 (*i*) is reported to have said " It is impossible to make a distiction between a wharfinger and a common carrier. They both receive goods on a contract. Every case against a carrier is like the same case against a wharfinger ".

We will now refer to the case decided by the Chief Justice Lord K. Kenyon in 1792 (2) in which, probably, for the first time a distinction was made between a common carrier and the other kinds of bailees. The case arose in this way. A public carrier undertook to carry goods from stour point [(*i*) Res V. Johnson (1772) 5 Buyrr (2) of the Trant Navigation 4 T. R. 581] to Manchester and to forward them from that place to Stockport. The goods arrived safely at Manchester and were deposited in the ware house there awaiting an opportunity to be transported to Stockport. While in the warehouse, the goods were destroyed by Fire. The consignor brought an action for damages and the plea in defence was the plea of an inevitable accident. Now, if the warehouse man had the same responsibility as the common carrier, there could be no doubt that he would be liable. The Lord Chief Justice decided otherwise and said " If the defendants were considered merely as warehouse men there would be no pretence to say that they were liable for such an accident as the present. The case of a carrier stands by itself on peculiar grounds: he is held responsible as an insurer and the reason given in the books (whether well or ill-founded is immaterial here) is to prevent fraud. But I do not see how we can couple the character of the carrier with that of the warehouseman, in which the defendants are not liable here, they not having been guilty of laches ". The idea of the public carrier being an insurer of the goods entrusted to his care was definitely stated in this case and the line of demarcation between a common carrier and other kinds of bailees was definitely drawn. I have told you already that the special considerations of public policy *viz.*, prevention of collusion and fraud on the part of the carrier, could not obviously apply to all kinds of bailees. And this is what Lord Kenyon rested his decision on. But one may be tempted to ask as to whether it would be logical to make a man liable for an accidental fire simply because he is acting as a common carrier. But you know that logic has never been the storng point of English common law.

In any event, the case noted above marks another stage in the development of common law in respect of the bailee and we may take it that since the end of the 18th century the rule in the case of all bailees, barring the public carrier and the common innkeeper has been to limit their liability to the performance of their contract with due diligence and to the use of due and proper care and caution for the custody of goods as property entrusted to or deposited with them. The public carrier, however, continued to bear the special responsibility and he stood in a class by himself.

We have, more than once, referred to the case of Coggs *vs.* Bernard decided by Lord Holt in 1703. We go back once again to it. Lord Holt decided that a common carrier was liable for the goods entrusted to his care " against all events but Acts of God and enemies of the king ". I have already told you that the expression " Acts of God " had a different meaning with Lord Holt than it had, for instance, with Lord Mansfield. In Roman law, an ' Act of God ' would be identical with Vis Major. But Lord Holt could hardly use the expression 'Act of God ' as synonymous with Vis Major. If you accept Vis Major as a ground of exemption from liability, you cannot prevent fraud and collusion on the part of the common carrier. He might occasionally find it convenient to contribute to the Vis Major—the overwhelming force—or sometimes to simply connive at it. Any way, if you allow Vis Major as understood in Roman law, as a ground of exemption it would reduce the special responsibility of a common carrier to almost a farce. It was, therefore, wholly unacceptable to the English lawyer saturated, as he was, with the idea of the special responsibility of the public carrier. Lord Holt, although he nowhere defined the expression used it in a limited and restricted sense but it was further limited by Lord Mansfield and his successors. Lord Holt was obsessed with the idea of prevention of fraud and collusion on the part of the carrier but he clearly wanted to include inevitable accidents or exceptional natural phenomena such as storm, tempest, earthquake etc., within the category of ' Acts of god '. But, then, there may be inevitable accident other than those mentioned just now such as accidental fire or an accidental collision which are neither natural phenomena nor acts of collusion or fraud. Lord Holt never suggested that a carrier would not be exempted from liability on the ground of such accidents, in

any event, such accidents as preclude all possibility of collusion or fraud. In fact, ' fire ' is specially stated in the case to be a ground of exemption and ' fire ' is not necessarily and always caused by lightning only. Such is the curious and elastic nature of English common law that the expression ' Act of God,' which was regarded as the most important ground of exemption of a carrier's liability, was not defined either by Lord Holt or by Lord Mansfield. For the first time, in 1876, Lord Chief Justice Cocenburn in deciding the case of Nugent V. Smith, attempted an exact definition of the expression. We will consider that case later but for the present let us consider the meaning attached to the expression by Lord Mansfield and others.

The case of Proprietors of Trent Navigation V Wood (*i*) came to be decided by the Chief Justice Lord Mansfield and two other learned judges in 1785. The facts out of which the case arose may be shortly stated thus: the plaintiff undertook to carry the defendant's goods from Hall to Gainsborough. The vessel in which the defendant's goods were being transported sank in the river by colliding against an anchor of another barge in the river and the goods, in consequence, were considerably damaged. The anchor was not visible from the vessel and the owner of the barge to which [(*i*) (1785) 3 exp. 127] the anchor was attached had not put up any buoy to indicate the position of the anchor. The plaintiff repaired the damage and then send the defendant for recovery of the money spent in recovering the goods and which the defendant refused to pay. The plaintiffs were public carriers and the case for them was rested upon the fact that there had been no negligence, and as it was wholly impossible to see or judge the position of the anchor that did damage, it was a case of an inevitable accident or necessity for which the carriers could not be made to suffer.

Lord Mansfield, in his judgment, said: " No case has been cited exactly in point; but it is clear that the carrier is liable in all cases except for accident happening by the Act of God, or by the King's enemies. The Act of God is a natural necessity, and inevitably such, as winds, storms, etc. The case of a robbery is certainly very strong, but not a natural necessity: and in this case this is an injury by a private man, within the reason of the instance of robbery, yet I think the carriers ought to be liable. There is some sort of negligence here: for as the buoy could not be seen, there should have been, on that count a greater degree of caution used ". Mr. Justice Askurst based his decision upon grounds of public policy. He stated thus: " but another rule is now sought to be set up; which is that the carrier ought not to be liable where no negligence is imputable to him; but no case has been cited to prove this doctrine; and I think that good policy and conveniences require the rule to be adhered to which has hitherto prevailed. It will naturally lead to make carriers more careful in general. If this sort of negligence were to excuse the carriers, when he finds that an accident has happened to goods from the misconduct of a third person, he would give himself no further trouble about the recovery of them." With great respect to the learned judge one would be inclined to point out that the finding of negligence in this case is somewhat laboured and artificial and the definition or description of an " Act of God " is very limited and restricted. The *ratio decidenli* of the case is negligence of the carrier and the standard of responsibility sought to be set up is very high and made to rest upon considerations of public policy.

In the very year that is 1785, another case (*i*) involving an interpretation of the expression ' Act of God ' fell to be decided by Lord Mansfield. The facts of the case were much stronger for the carrier than in the preceding case. What happened was this: the plaintiff brought an action against the defendant as a public carrier, for not safely carrying and delivering the plaintiff's goods. The goods entrusted to the defendant for carriage from London to Shaftesbury were deposited at an intermediate station in a booth. While there a fire broke out by night in a neighbouring booth and spread to the booth where the plaintiff's goods were deposited and the goods were destroyed by fire without any actual negligence on the part of the defendant. The fire, of course, was not caused by lightning. On behalf of the plaintiff reliance was placed on the recently decided case of Proprietors of Trent Navigation V Wood and the interpretation of ' Act of God ' given by Lord Mansfield therein. On behalf of the defendant, reliance was placed on Lord Holts decision in Coggs V. Bernard and it was sought to be argued that " inevitable accident " would fall within the definition of " Act of God " as given by Lord Holt and it was argued that in any event, an inevitable accident like the present would fall, if not within the words, within the reason and intendment of the expression.

By an unanimous decision, the court negatived the defence plea. Lord Mansfield in delivering the judgment said as follows: " The question is, whether the common carrier is liable in this case of fire ? It appears from all the cases for years back that there are events for which the carrier is liable independent of his contract. By the nature of his contract he is liable for all due care and diligence; and for any negligence he is liable on his contract. But there is a further degree of responsibility by the custom of the realm, that is by the common law; as carrier is in the nature of an insurer. It is laid down that he is liable for every accident, except by the " Act of God or the King's enemies."

" Now, what is The " Act of God?" I consider it to mean something in opposition to the act of man; for everything is the Act of God that happens by His permission; Everything by His knowledge. But to prevent litigation, collusion and the necessity of going into circumstances impossible to be unravelled, the law presumes against the carrier, unless he shows it was done by the King's enemies or by such act as could not happen by the intervention of man, as storms, lightning and tempests.

If an armed force came to rob the carrier of the goods, he is liable: and a reason is given in the books, which is a bad one, *viz.*, that he ought to have a sufficient force to repel it; but that would be impossible in some cases, as for instance in the riots in the year 1780. The true reason is, for fear it may give room for collusion that the master may contrive to be robbed on purpose, and then share the spoil.

In this case, it does not appear but that the fire arose from the act of some man or other. It certainly did arise from some act of man; for it is expressly stated not to have happened by lightning. The carrier in this case is liable inasmuch as he is liable for inevitable accident."

This was indeed a momentous decision in the history of the law of common carriers. It upset the rational and logical decision of Lord Holt in Coggs V. Bernard and took the law back to what it was in the days of Lord Coke. By making the carrier responsible even for inevitable accidents Lord Mansfield practically decided that it was the status that was to govern cases relating to the carrier's liability. This decision is all the more regrettable as it emanated from so great and enlightened a judge as Lord Mansfield. Considerations of public policy such as prevention of fraud and collusion on the part of the carrier upon which Lord Holt's decision was based were practically thrown over the board and a wholly arbitrary and artificial standard of reponsibility having no foundation upon logical or normal considerations, came to be set up. You will find that this retrograde decision came to sway the law of England for a long-long time to come. This further confirms the view that logic has never been the strong point of English common law.

Lord Mansfield of course refers to public policy. But I respectfully submit it is in the nature of a camouflage. A public policy for the prevention of fraud and collusion is understandable and can be appreciated but a public policy which denies the defence or plea of " inevitable accident ", I submit, is wholly illogical and understandable. Fletecher rightly observes " Coggs " V. Bernard was a landmark in the transition from old to the new and a constructive attempt to work out a rational and comprehensive scheme. Forward V. Pirttard judged by all standards of judicial legislation was a retrograde step ".

THE PROBLEM OF LAW STUDY

BY

PROF. R. C. PAL, M.A., M.L.

Once the knowledge of law was the special prerogative of a privileged class, commonly known as the sacerdotal class. But then it was not intended nor utilized for earning and amassing large fortunes. In those archaic days the stratification of society was such that each had its task so definitely assigned as was most conducive to the common good of the society. Society was then truly conceived as an organic unit and not a mere mechanical aggregation. The underlying idea of such stratification seems to be this—" No man exists for himself alone, but for the sake of all. As each individual existence, from the cradle to the grave, is due to others, so likewise he exists for others whether he wills it or wills it not "—Jhering *cf.* :—

" আপনারে ল'য়ে বিব্রত রহিতে
আসে নাই কেহ অবণী 'পরে
সকলের তরে সকলে আমরা
প্রত্যেকে আমরা পরের তরে "
—কামিণী রায়

Individualism is thus sub-ordinated to collectivism just in the same way as independence of a country is sought to be sub-ordinated to the inter-dependence of countries in the realm of International Law to-day. However, these bands of selfless lawyers used to render Yeomens' service in return of a small pittance from the state just sufficient to maintain them and their disciples who were to come after them. Although there was room for display of outstanding legal acumen and forensic skill, there was none for personal enrichment. To a modernist, surcharged with the flashes of individualism, this stratification of society is an anathema; he feels he is thus unjustly denied the free exercise of his talents; he argues why should he be a priest and not a military man, or why should he be a military man and not a merchant or why should he be a physician and not a lawyer ? With perhaps a hundered-fold increase in the struggle for existence, for reasons beyond his control, he finds himself in a dilemma in the matter of earning a decent living and curses the present set up of things and the state which lamentably fail to recognise the individual as an economic factor. He is dreaming sometimes of a socialistic state and sometimes of a communistic state, promising each member his due. He envisages a state in which the right to a minimum existence, *i.e.*, a minimum livelihood would be guaranteed to everyone, and he finds an echoing cord in Dr. Berolzheimer, who says:—" It can hardly be realized that a truth so near and so apparent as the reciprocity of economics and law should so tardily find a place in science, and that this truth is even yet combated." And no wonder, for " no child birth is so heavy with labour and pain as the child birth of an idea "—*Ibid.* Of late the U. S. S. R. was making a grand experiment with Rousseau's famous charter of equality of men. It met with a phenomenal success in some sphere no doubt, but somehow or other, the individual merit or capacity engendered and reared its (ugly?) head, causing serious headaches to these experimentalists. So the position comes to this, that in any scheme of society of your imagination you must be an active actor—be your task pre-ordained as of yore or freely chosen as now. This dignity of labour, this human freedom, is the mainstay of society. The betterment of the conditions for the fullest display of this dignity of labour and human freedom has been the theme round which all idealism—that fertile mother of revolutions and reforms—in all ages and climes have centred with variable successes. It may be truly said that this idealism is working like a watch, which, though keeping correct time, cannot indicate the hour for the whole world.

This freedom of choice of your vocation so valiantly achieved, instead of easing the situation, makes it far more complex. While

formerly one's vocation was fixed by birth, now-a-days it is a result of convention. Everybody knows that there is a good deal of difference between a right acquired by birth and that acquired by convention. The one is inalienable and unassailable, while the other hinges on the slender thread of convention liable to destruction at the slightest impact. You have voluntarily broken away from your appointed groove and selected a profession of your own choice, say Law. Apart from the formidable competition in the line so chosen where everybody will take you to be an interloper, petty jealousy and rivalry will impede you at every step. None in the profession will have a word of cheer for you, no encouragement, no sympathy would be vouchsafed to you, nobody would care even if you die of starvation. This is certainly a very unenviable position to be put in and cannot be cheerfully countenanced. Now compare such a case with that of a beginner who is brought in, in a particular vocation of the old order solely by his right of birth. He would be given a very cheerful welcome to this guild by every body, he would be treated with tenderness and all possible help, encouragement and consideration would be meted out to him in the expectation that the name and fame of that particular guild may be ultimately reposed in a safe and worthy hand. The spectacle is not rare now-a-days of a bright youngman of undoubted parts and attainments, choosing fruitlessly one vocation after another, comparable to the proverbial rolling stone which gathers no moss. The old order spared him at least such painful perambulations.

This I am saying not in disparagement of law studies. It has been well said that law is neither a trade nor a solemn jugglery, but a living science. Indeed a training in law has an inestimable value. It trims your mind wonderfully well. It sharpens your wit. It enables you to take an all comprehensive view—both for and against—of a matter presented to you. And lastly it enables you to come to a quick decision. And in these days of complexities of life it is certainly a very valuable asset to whichever walk of life you belong to. The politician, the administrator, the legislator, and indeed anybody professing to do good to the country should do well to have such a training. After the Independence a completely new line has been thrown open to our youngmen in the diplomatic, consular and other foreign services where a training in law would ordinarily be very much prized. But if, on the other hand, you want to take up law for a career think thrice before you do so. In the memorable words of a Doyen of the Calcutta Bar, who had joined the profession in the early seventys and who had his day, and whose golden jubilee of fifty years' practice we had celebrated and whose diamond jubilee of sixty years' practice was nearing celebration, but cut short by his death a little earlier,—we get a true picture of the present day condition of the profession. Said he in his declining years—" It was a noble profession indeed but rendered ignoble by the entry of unwanted and undesirable elements—thanks to the freedom of choice of vocation on the one hand and to the keen struggle for existence on the other. Malpractice is now masquerading as solid practice. It is only those fortunate few who could command either a patrimony or a matrimony of a very high order or at least a company should enter the holy portals of law, so that they would keep them unsullied and free from spurious contamination." The implication is quite obvious and brings us back to the place from where we started, *viz.*, the privileged class of lawyers who could keep the wolf always away from the door. Lord Bolling-broke's estimate of the legal profession also should not be forgotten—" In its nature it is the noblest and most beneficial to mankind, and in its abuse and debasement, the most sordid and the most pernicious."

However, let us now turn our attention to the type of education we are imparting to our law students. We are free to confess that we have not been able to move with the times and to equip our students with requisites suitable for the present day struggle. The syllabus has grown out of date. While on the one hand some of the subjects taught have lost their importance, on the other, subjects of growing importance have been neglected. The second noticeable defect is that unlike the engineering or the medical studies, a law student is not required to sit for any annual test to qualify himself for the next higher class. The third defect lies in the rigorous percentage system—it benefits none in the generality of cases. Where the necessary *animus* is lacking the system can achieve very little, just as you may take the unwilling horse to the pond but cannot make him drink. Likewise, undue emphasis is laid on the moot-courts, started no doubt with the best of motives, but now reduced to naught. If a student lacks the natural aptitude and is not endowed with the gift of a gab it is idle to expect that by a mere

four or five minutes' grooming in the class room in the course of one full year he would turn out a powerful advocate. Leaving aside these defects to be remedied by appropriate authorities we may rivet our attention to the type of training most needed for the proper equipment of our students to make them fit to encounter the life's battle that lies ahead of them.

To begin with, the huge mass of statutes and case laws need a careful and thorough pruning if law is to have a healthy development at all. The stupendous accumulation of judicial detritus threatens our entire legal system with a menace not to be underestimated. As early as in 438 Theodosius, while promulgating the Codex Theodosianus, gave out:— "Law when it is dispersed with the multitude of books and large masses of statutes, is a thing which it is impossible for any ordinary mortal to master." Fifteen hundred years have rolled past and it staggers one's mind at the mere sight of the mountainous heaps of statutes and case laws that have since accumulated. The mazes and labyrinths of case laws and statutes scattered about only blur and obstruct our vision. A ruthless pruning, therefore, has become imperative. This pruning of case laws may not offer any insurmountable difficulty. That may be safely entrusted to an expert committee of eminent jurists and judges. Their main function will be to delete obsolete and overruled cases and cases of doubtful validity and to bring about a closer co-ordination and systematization between what would escape the pruning knife. But our difficulty lies with the statutes. For statutes are not mere growths, and may not be so summarily scissored off. Vico teaches us: "Human World developed through modifications of mind, consequently a large part is to be attributed to the factor of reflection. In law nature enters with all its influence on man but man also enters with his reflection and free-transforming activity." This makes out a formidable case for codification of the entire law of the country. There can be no doubt that codification is the highest synthesis of law and not a mere crystalization, as was apprehended by Savigny and his historical school. But the real danger lies in the possibility of an undigested effort to correct known evils by methods, which may have the effect of rendering intolerable conditions that can still, with increasing difficulty, be endured.

In the next place what arrests our attention is the functions of the judges. In our view these functions require a thoughtful revision. The same fate which overtook the Roman Law as a result of the Law of Citations is bound to overtake sooner or later, our entire legal system. Slowly but surely the judges are being reduced to *auto-mata* merely registering and counting, perhaps sometimes century old, decisions and then striking a balance either for or against a particular point with no appreciable power of individualization allowed to them. Your eloquence, your forensic skill counts for nothing. Your reasoning is gagged and your sole task is to pile up as many decisions as you can, to overawe not only your 'learned friend' on the other side but sometimes perhaps, the judge as well. I remember an amazing incident that took place not long ago. An advocate was just going to formulate his point of law by prefacing:—"Possession, My Lord, is nine-tenths of ownership," and anon came a query from My Lord—"Where is that decision? Give me the decision." Any comment is superfluous. By contrast, we are greatly relieved to learn that the continental countries are never enamoured of case laws, for they mostly prefer to go by the fundamentals.

We now take leave of the legislature and the judiciary and step in the precinct which is truly our own. As observed before, our syllabus has become out of date and suitable changes therein are long overdue. And this change has become all the more insistent in view of the changed condition in the country after our Independence in August 1947. The private International Law—popularly known as the "Conflict of Laws," thanks to Story and Dicey—is destined to play a very important part, now that the country is divided into two sovereign independent states—India and Pakistan. A careful study of this branch of the law has become indispensable to our students and it can brook no delay. The Company Law also deserves a similar consideration. Through the impact of expansion of trade, commerce and industry all round, for good or for evil, companies are bound to crop up either to survive or to die. And at both these stages they require vigilant nursings of careful lawyers. Cases under the Bankruptcy and Insolvency Laws are on the increase and therefore these twin laws should find a place in the syllabus. The Income-Tax-Law and its pet child the Agricultural-Income-Tax-Law as also the Sale-Tax-Laws, disowned by traders and consumers alike, seem to have pervaded the entire social fabric and a peep into these laws may not be altogether despised. Then the art of drafting and

conveyancing etc., also should not escape our notice, for we are living verily in an age when every body wants to put every blessed little thing in writing. A revision in the syllabus as indicated above is likely to save our students a five years' time in another direction. The Incorporated Law Society which conduct the Attorneyship Examination may be induced to do away with their examination, for the proposed change in our syllabus will take the wind out of their sail.

At the present moment there is one other disturbing factor before the law students. It is the problem of the language. A very influential section of our people are insistent on banishing the English language, for, they say, it shamefully reminds them of the British tutelage. That English is the language of nearly half the world—that it affords unique opportunities for world correspondence in matters of trade and commerce, that it opens up the vistas of latest scientific and other knowledge of the most advanced and energizing part of the world—such and other considerations do not deter them. Have they got any suitable substitute? Oh! no—but they hope to dress up the Hindi as the state language, although it is still at the crawling stage and although more than half the population of India, in between the Vindhya ranges and the Cape Comorin, are innocent of this baby of the language. The Sanskrit, with its hoary past, though fully developed and complete in every respect, does not seem to catch their eyes. In Sanskrit you have a profound literature, you have perhaps the world's best philosophy, you have very nearly complete sets of books of law and their elaborate commentaries and you have also some rare books on politics and medicine, etc. All these works have evoked the wonder and admiration of the entire civilized world. Cf. Max Muller—(while admiring the felicity of expression of the great Vedic Philosopher Prajapati Paramestin)—" one of the happiest attempts at making language reflex the colourless abstractions of the mind "—" expressions at which the language blushes, but her blush being a blush of triumph." Everybody knows that most of the foreign countries have assigned a place of honour to Sanskrit in their universities, the latest among them being the Kabul University (Afganisthan). Thus Sanskrit makes its room everywhere because of its own intrinsic merit and not because of any artificial laudation. Even then Sanskrit is a taboo. But why? No cogent or satisfactory reply has ever been given. Therefore the people are entitled to draw their own inferences. One thing that may be urged against Sanskrit is that it is now practically a dead language. But it is precisely for this reason that the claim of Sanskrit the venerable mother of all the provincial languages must be upheld. For now that we are independent, we owe a duty to ourselves to revive and revitalise this dead language to the glory of our motherland. In the second place, the adoption of Sanskrit means equal disadvantage to all, so that no community, no province can acquire any undue fillip over the rest of the country on the score of language alone. And herein perhaps the reason for antipathy against Sanskrit lies embedded. You cannot blame the people if in this language controversy they come to ascribe motive to their opponents and accuse them point blank that they are at the dirty game of launching a Hindi Imperialism in place of the one that has just quitted the land viz., the British Imperialism. Coming nearer home to the provinces it is no small mercy to be assured that the provincial languages would be given the place of honour in their respective spheres. This is as it should be. For there is a real parallelism in the development of language and law. Language reflects the thought and law manifests the acts of man. So the position comes to this: if you want to live a life of a useful citizen you are to learn, in addition to your mother tongue, the following languages—

(1) A classical language, e.g., Sanskrit or Persian or Arabic, according as you are a Hindu or a Muslim, to complete your education. (2) The language of the centre, *i.e.*, the state language. (3) The English language—the commercial language of the world and (4) any one of the other more important of the European languages, as for example, French, German, Russian, etc., if you must cast any wistful glance at the numerous foreign services now open to you. No wonder if you simply die of suffocation through the sheer weight of these languages—not a very pleasing prospect, to be sure!

Indeed our profession has fallen on evil days. It is passing through a veritable crisis and this survey will not be complete if we fail to take notice of one or two notable recent events which have vitally affected the profession. The alarming shrinkage in the area of Bengal as a result of the partition of the province has dealt a heavy blow to the profession. Majority of the people, well and

long established in this profession in East Bengal, have been stranded and reduced to the position of the wandering Jews. Those belonging to West Bengal proper mostly find themselves, according to the inexorable law of demand and supply, to be unwanted and superfluous members in the profession. Any scheme of the reconstruction of the country or any scheme of any projected law reform would be futile and incomplete if it fails to embrace this particular problem which is pressing the profession very hard.

And lastly from the lawyers' point of view a word of caution is needed for our legislators. Of late there has been a tendency to undertake hasty legislations which in some cases have undermined the entire social fabric to the utter bewilderment of the very people in whose interest such laws were professedly passed. The B. A. D. Act, the Money Lenders Act, the Debt Settlement Board, etc., have been responsible in shattering to pieces the sanctity of contract—the main spring of not only the trade and commerce of the country but even of petty normal transactions of individuals, as between man and man, of their everyday life. This "Robbing Peter to pay Paul"—principle will never carry the country very far. The other objectionable feature in some of these acts is the successful ousting of lawyers from most of the proceedings under these acts. In our view it is a serious inroad against the interest of the profession, on the one hand, and a lamentable exhibition of apathy towards the true interest of the disputants in thus depriving them of proper legal advice, on the other.

This fugitive survey, almost barren and devoid of any rosy picture, is intended not so much for damping the spirit of our budding lawyers as for focussing their attention on some of the glaring defects and imperfections in our law study, where a new orientation in the light of the changed conditions in the country, has become irresistible. Indeed, it is from this younger generation that our future leaders, future legislators, future administrators and future judges and jurists will rise. It is therefore confidently expected that when their time comes they would not be caught napping but would be found quite alert and thoroughly prepared to take upon themselves the sacred task of all reforms—more particularly the law reforms—the country is so loudly calling for.

PUBLIC ASSEMBLAGES AND INDIVIDUAL RIGHTS

BY

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Dicey in his *Law of the Constitution* informs us that "no better instance can indeed be found of the way in which in England the constitution is built up upon individual rights than our rule as to public assemblies." (*Ibid*, 9th Edition, p. 271.) He points out that as each individual subject of the State has the right of free movement and of free articulation of opinion, several such individual subjects, just because they each may go where they like and each may say what they please, are entitled to organise a public procession or a public meeting on the highway, provided only, they do not thereby make an improper use of the highway concerned or otherwise break the law. So Halsbury puts it that such a procession or meeting is not necessarily an improper user of the highway and it will not be illegal unless prohibited by some statute or authorised regulation or unless an obstruction is caused. In the words of Halsbury, "apart from any statute or authorised regulation, the test is apparently whether in all the circumstances,

such procession (or meeting) is a reasonable user of the highway and not merely whether it is likely to lead to an obstruction." (*See* Halsbury's Laws of England, 1st Edition, Volume 27, pp. 268-69 & 280-81.)

In our present discourse we shall trace how the assemblages was founded upon individual rights. But in its course of development, it has followed its natural genius in the matter, and, as it stands at present, it can no longer be regarded as part of the law of individual freedom of movement and individual freedom of discussion, as it was in the days of Dicey. The history of the development of the law of public processions and public meetings is the history of the gradual imposition of restrictions or limitations on the exercise of those individual rights, in their collective capacity, which are in truth so many inroads upon individual liberty of person and individual liberty of speech.

In our present discouse we shall trace the history of its development and it will be found that the law on this topic has been evolved out of the necessity, which was felt, of preserving the King's peace, it having been developed from the standpoint of how to prevent obstructions and apprehended breaches of the peace.

The leading case on the point is that of *Beatty* vs. *Gillbanks* (1882) 9 Q.B.D. 308. An association of people calling themselves the Salvation Army met together in a public place intending to parade their procession with knowledge that they would be opposed by the Skeleton Army, another organisation antagonistic to themselves. The magistrates had put up a notice forbidding the holding of the meeting. The appellants, who were the Salvationists, *i.e.*, the members of the Salvation Army, were convicted for unlawfully assembling in defiance of the notice and were bound over to keep the peace. The conviction was quashed on appeal, Field, J., observing as follows: " What has happened here is that an unlawful organisation has assumed to itself the right to prevent the appellants and others from lawfully assembling together and the finding of the Justices amounts to this, that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a proposition." In course of his judgment, the learned Judge further observed: " There is no doubt that they, and with them, others, assembled together in great numbers, but such an assembly to be unlawful must be tumultuous and against the peace. As far as the appellants are concerned, there was nothing in their conduct when they were assembled together, which was either tumultuous or against the peace. But it is said that the conduct pursued by them on this occasion was such as on several previous occasions had produced riots and disturbances of the peace and terror to the inhabitants, and that the appellants knowing when they assembled together that such consequences would again arise, are liable to this charge. Now, I entirely concede that everyone must be taken to intend the natural consequences of his acts and it is clear to me that if this disturbance of the peace was the natural consequence of the acts of the appellants, they would be liable and the Justices would be right in binding them over. But the evidence set forth in the case does not support this contention; on the contrary, it shows that the disturbances were caused by other people, who were antagonistic to the appellants and that the acts of violence were caused by them." Referring to the previous cases, the learned Judge added that in each of them, the circumstances of terror existed in the assembly itself either in its object or in the mode of carrying it out and that there was the widest difference between those cases and the present one. It was assumed then that the Salvationists used to meet together, as they certainly did, for a lawful purpose and quite peaceably and without any intent either themselves to break the peace or to incite others to do the same. This case undoubtedly upholds, though not expressly deciding so, the legality of public processions on the Highways.

So far as the above statement of the law goes, it must be said that it appears to be at variance with the definition of Unlawful Assembly as given in the Draft Criminal Code of 1879, which runs as follows: " An unlawful assembly is an assembly of three or more persons, who, with intent to carry out any common purpose, in such a manner or so conduct themselves when assembled as to cause persons in the neighbourhood of such assembly to fear on reasonable grounds that the persons so assembled will disturb the peace tumultuously." The Law Commissioners added a note to the definition to the effect that " in declaring that an assembly may be unlawful if it causes persons in the neighbourhood to fear that it will needlessly and without reasonable occasion provoke others to disturb the peace tumultuously, we are declaring that

which has not been specifically decided in any particular case.'

This decision came in for criticism in *O'Kelly* vs. *Harvey* (1883) 14 L.R. Ir.'105, decided by the Court of Appeal in Ireland. The plaintiff, in that case, with other persons, unlawfully conspired together to solicit the tenants of certain landlords to refuse to pay rent to them and met and assembled at a public place for the purpose. The defendant, a Justice of the peace, had information that if the meeting were so held, the peace would be broken by their opponents and he, having reasonable grounds for believing that the peace would be broken if the meeting were permitted and that the peace could only be preserved by separating and dispersing those assembled, requested plaintiff and others to disperse and, on their refusal, he placed his hand upon him using no more force than was necessary to disperse the meeting. The plaintiff thereupon brought an action against the defendant for assault. Lord Chancellor, Law, said: "Assuming the plaintiff and others assembled with him to be doing nothing unlawful, but yet there were reasonable grounds for the defendant believing as he did, that there would be a breach of the peace if they continued so assembled, and that there was no other way in which the breach of the peace could be avoided but by stopping and dispersing the plaintiff's meeting, was the defendant justified in taking the necessary steps to stop and disperse it? In my opinion he was so justified under the peculiar circumstances stated in the defence, and which must be taken for the present as admitted to be there truly stated. Under such circumstances, the defendant was not to defer action until a breach of the peace had actually been committed. His paramount duty was to preserve the peace unbroken and that by whatever means were available for the purpose. Furthermore the duty of a justice being to preserve the peace unbroken, he is, of course, entitled, and in fact bound to intervene the moment he has reasonable apprehension of a breach of the peace being imminent, and therefore he must in such cases necessarily act on his own reasonable *bona fide* belief as to what is likely to occur." Referring to *Beatty* vs. *Gillbanks*, the Lord Chancellor observed: "I frankly own I cannot understand that decision, having regard to the facts stated in the special case and which, with all deference to the learned judges, who decided it, appears to me to have presented all the elements necessary to constitute the offence known as 'unlawful assembly" and he went further: "I have always understood the law to be that any needless assemblage of persons, in such numbers and manner and under such circumstances as are likely to provoke a breach of the peace, was of itself unlawful; and this, I may add, appears to me the view taken by the very learned persons who revised the Criminal Code Bill in 1878." It will thus be seen that the magistrate has the authority to preserve the peace by dispersing even a lawful meeting provided there is, in his opinion, no other way of maintaining it. It is to be noted that this right of the magistrate was carried to its furthest extent in the above case.

The Court of appeal in holding as above followed the very similar case of *Humphries* vs. *Connor* (1864) 17 Ir. C.L.R. 1. There a zealous Protestant lady was walking in a public street through a crowd of Roman Catholics wearing an orange lily, which, being a party emblem, excited the anger of the crowd and a riot began. She had no intention of provoking a breach of the peace and she was doing nothing which was in itself unlawful. A constable finding there was no other means of protecting her or of restoring the peace, requested her to remove the lily but she stoutly refused; whereupon he, without using any needless force, removed the flower from her person and restored the peace thereby. On an action for assault by the lady against the constable, it was held that the constable was justified in acting as he did on the ground that otherwise the king's peace could not be restored. One of the Judges, Fitzgerald, J., who was a judge of great eminence, however, doubted whether the right of the magistrate or constable to interfere with the exercise of one's legal rights was not in this case carried too far. "I do not see" said his lordship, "where we are to draw the line. If (X) is at liberty to take a lily from one person (A), because the wearing of it is displeasing to others, who may make it an excuse for a breach of the peace, where are we to stop? It seems to me that we are making, not the law of the land, but the law of the mob supreme, and recognising in constables a power of interference with the rights of the Queen's subjects, which, if carried into effect to the full extent of the principle, might be accompanied by constitutional danger. If it had been alleged that the lady wore the emblem with an intent to provoke a breach of the peace, it would render her a wrongdoer;

and she might be chargeable as a person creating a breach of the peace."

In 1891, the matter, however, again came up for consideration before the same Court in the case of *R.* vs. *Justices of Londonderry* (1891) 28 L.R. Ir. 440 and the Court of Appeal approved of the decision in *Beatty vs. Gillbanks* without referring to the case of *O'Kelly vs. Harvey*. In that case, the defendants, who were the members of a religious association called the Salvation Army paraded the City of Londonderry with a band playing musical instrument and carrying a flag and continued to do so notwithstanding remonstrances of the constabulary and as such they were charged with having assembled under such circumstances as were calculated to provoke a breach of the peace. No misconduct on the part of the defendants was proved nor was any act of hostility on the part of the crowd. It was however proved that a riot took place 4 years before, when the defendants were proceeding through the same streets and that the constables accordingly apprehended a breach of the peace. It was held that the orders passed upon them to find sureties to keep the peace and to be of good behaviour could not be sustained. In delivering the judgment of the Court, C. J. O'Brien observed as follows: "There is a broad distinction between the case of a peace officer, who entertains a real belief that there is instant danger to the peace and who is called upon to act on the spot with the peril of the gravest consequence if he errs and that of a justice, who has to form a judgment of things past in order to guard against a future danger. The one is the case of an officer in the presence of dangerous crowds; the other, that of a judge in a tribunal to which the elements of the danger have for the time being been made amenable." Referring to the conduct of the assembly, his lordship continued "No act on the part of any person was found to shew that it was reasonably probable that the conduct of the defendants would on the day in question have produced a breach of the peace." And again, "I am fully satisfied that the magistrate did not make the order, which is impugned, by reason of there having been or there being likely to be, any obstruction of the highway and that the true view of what took place is that the defendants were bound over in respect of an apprehended breach of the peace and in my opinion there was no evidence to warrant that apprehension." His lordship then concluded: "What would become of personal liberty if the innocent action of a person could render him liable to restraint at all because it gives groundless offence to others. I hold that no person without misconduct can be subjected to restraint any more than to punishment" and further "If danger arises from the exercise of lawful rights resulting in a breach of the peace, the remedy is the presence of sufficient force to prevent that result, not the legal condemnation of those who exercise those rights."

In the same case, Justice Holmes, while concurring with the Chief Justice, expressed his opinion regarding the decision in *Beatty vs. Gillbanks* in the following terms: "Much has been said on both sides in the course of the argument about the case of *Beatty vs. Gillbanks*. I am not sure that I would have taken the same view of the facts of that case as was adopted by the Court that decided it; but I agree with both the law as laid down by the judges and their application of it to the facts as they understood them. The principle underlying the decision seems to me to be that an act, innocent in itself, done with innocent intent, and reasonably incidental to the performance of a duty, to the carrying on of business, to the enjoyment of recreation, or generally to the exercise of a legal right, does not become criminal because it may provoke persons to break the peace, or otherwise to conduct themsleves in an illegal way."

While the law as enunciated in *Beatty vs. Gillbanks* was thus received with alternate approbation and disapprobation by the Irish Courts of Law, the case of *Wise vs. Dunning* (1902) 1 K. B. 167, came up for decision before the same Court of King's Bench Division in England. The appellant, a Protestant lecturer, had previously held meetings in the city of Liverpool, a Roman Catholic stronghold, using language highly insulting to the Roman Catholic inhabitants of that place. The natural consequence of his words was such as was likely to cause a breach of the peace by his Roman Catholic opponents. In the present case, a meeting of Protestants having been advertised to take place again in the same locality, and it having been announced that the appellant would address the meeting, the magistrate concerned summoned Wise beforehand and bound him over in recognisances to be of good behaviour, he being of opinion that Wise's language had been provocative on the former occasion and that it was likely to occur again. In fact large crowds had already assembled before the proposed meeting took

place and a serious riot was only averted by police interference. It was held that the magistrate had the jurisdiction to do so. Chief Justice Alverstone observed: "In a number of cases and before different judges what I may call the essential condition has been stated substantially in the same way though in different language that there must be an act of the defendant the natural consequence of which, if the act be not unlawful in itself, would be to provoke an unlawful act by other persons," and he went on to say that "the law does not as a rule regard an illegal act as being the natural consequence of a temptation which may be held not to commit it. But the cases with respect to apprehended breaches of the peace show that the law does regard the infirmity of human temper to the extent of considering that a breach of the peace, although an illegal act, may be the natural consequence of insulting or abusive language or conduct. Possibly this is an exception to the rule."

The learned judges referred to the cases of *Beatty vs. Gillbanks* and *R. vs. Justices of Londonderry* and apparently conceived that they were following the rule as laid down therein. But, whatever might be their avowed object, it is very difficult to reconcile all they have said with what was stated in *Beatty vs. Gillbanks*. The expressions used in their judgments may undoubtedly be cited as laying down the broader rule that a public meeting, in itself lawful, and carried on, so far as the promoters and the members of it are concerned, perfectly and peaceably, may become unlawful solely because the natural consequence of the meeting will be to produce an unlawful act, *viz.*, a breach of the peace committed on the part of the opponents. The only thing that may be noted here is that the case of *Wise vs. Dunning* does not directly deal with the unlawfulness of a public meeting or assemblage but with the question as to the circumstances under which a person intending to hold such meeting may be required to find sureties for good behaviour; and, so far as the actual decision is concerned, it must be said that Wise was rightly penalised because there was every likelihood that he would persist in his usual insulting language and behaviour, which had on the previous occasions led to disorder and which was therefore most certainly calculated to provoke an opposition to the point of creating a disorder; for, insulting behaviour, even though it may involve the utterance of words, which are not in themselves unlawful, amounts to unlawful conduct. At any rate, it has been interpreted by text-writers as having extended the common law doctrine by upholding the powers of the magistrates to exercise potential control over public assemblages by binding over their would-be members to keeping the peace. So, Kenny in his Outlines of Criminal Law sums up the law in the following manner: "Even a person, who has not actually committed any offence at all, may be required to find sureties for good behaviour or to keep the peace, if there be reasonable grounds to fear that he may commit some offence or may incite others to do so or even that he may act in some manner which naturally tends to induce other people (even against his desire) to commit one (*vide* 15th Edition, pp. 582-583). It would thus appear that viewed from this point, the members of the Skeleton Army in *R. vs. Justices of Londonderry or* even the members of the Salvation Army in *Beatty vs. Gillbanks*, might have been required by the magistrates to find sureties for good behaviour or to keep the peace.

It is to be submitted, however, that unless there is anything in the character of the assembly, which makes it illegal, an assemblage of persons does not become an unlawful assembly *solely because* it will provoke wrongdoers to commit a breach of the peace (per Holmes, J., in *R. vs. Justices of Londonderry*). Such an assembly will not become unlawful even in consequence of any notice given by the authorities, for it cannot alter its character, *e.g.*, a police warning cannot of itself render an assembly, which is not otherwise illegal, an unlawful assembly. At common law, whether a procession or meeting is unlawful depends upon whether the user is reasonable and reasonableness of use is a matter for judicial determination and not left to the discretion of the administrative authorities, as will appear from the case of *M'Ara vs. Magistrate of Edinburgh* (1913) S.C. 1059 (Scotland). In one way, however, an otherwise perfectly lawful meeting or procession will become unlawful, that is to say, when there is a reasonable apprehension that somebody else, as a result of such procession or meeting being held, will commit a breach of the peace and peace cannot be preserved or restored by any other means except by asking the members to disperse; in such a case, if such procession or meeting be still held without dispersing, it will become an unlawful assembly. This no doubt is a very serious inroad upon individual right to do a lawful

act and its only justification is the necessity of the case. The problem of maintaining order, which is the primary function of the State, justifies the taking of all possible steps, which are necessary for the preservation or restoration of order by those who are entrusted with the duty of maintenance of order. It is therefore clear that every peace officer, the magistrate or the police or any other authority, has the duty to do everything required for the purpose. But for all that it is not for a peace officer to take the easier course of prohibiting the continuance of a lawful meeting or procession unless all other steps to prevent a breach of the peace have been taken. Judicial authority has made it pointedly clear that a meeting or a procession undertaken for a lawful object must not be dispersed in order to prevent opponents interrupting the same, unless and until, it is plain that by no other means can the peace be preserved. As stated by Chief Justice O'brien in *R vs. Justices of Londonderry* (supra) "If danger arises from the exercise of lawful rights resulting in a breach of the peace the remedy is the presence of sufficient force to prevent that result, not the legal condemnation of those who exercise those rights." The remedy therefore lies in placing a sufficient police force at the meeting or with the procession to preserve the order. And once the police are present there, they should favour the continuance of the meeting or the procession, thus lawfully assembled, which is first in the field, strictly in accordance with their duty to preserve order and deal more harshly with the opponents, who are concerned to attack the existing order of the Government, *viz.*, by arresting the wrongdoers and protecting the promoters of such meeting or procession. (See per Tindal, C.J., in his charge to the jury in the *Bristol Riots* (1832) 3 C & P 261; Also *R. vs. Pinney* (1832) 9 B & Ad. 947). Only in the last resort, as we find in *O'klly vs. Harvey*, should the step of dispersing the meeting or the procession be taken by the Magistrates or the police, *i.e.*, if all other means such as the arrest or dispersal of interrupters and wrongdoers, the strengthening of the members of the police force present, have failed—then and only then, should a lawful meeting or procession be asked to disperse.

Dicey in his Law of the Constitution sums up the results of the foregoing decisions as follows: "The principle, then, that a meeting otherwise in every respect lawful and peaceable is not rendered unlawful merely by the possible or probable misconduct of wrongdoers, who to prevent the meeting are determined to break the peace, is, it is submitted, well established, whence it follows that in general an otherwise lawful public meeting cannot be forbidden or broken up by the magistrates simply because the meeting may probably or naturally lead to a breach of the peace on the part of wrongdoers." Dicey further deduces therefrom the following two limitations upon the application of the above principle,—restrictions which are grounded upon the paramount necessity for preserving the King's peace, *viz.*, (*i*) A meeting, which because of the illegality of its object or of the unlawfulness of the conduct of its members provokes opponents to a breach of the peace will thus become an unlawful assembly; (*ii*) An otherwise perfectly lawful meeting, which in fact provokes a breach of the peace on the part of those opposed to the meeting, may, if the peace can be preserved or restored by no other means, be required by magistrates or other persons in authority to break up; and if the meeting does not disperse, it will become an unlawful assembly. The magistrates or other persons in authority may, also if the necessity of the case so requires, prevent the members from holding the meeting. If the peace can be preserved not by preventing or breaking up the otherwise lawful meeting but by arresting the opponent wrongdoers, they are bound to arrest the latter and protect the members in the exercise of their lawful rights. These limitations or restrictions are in reality nothing else than restraints, which, for the sake of preserving the peace, are imposed upon the ordinary freedom of individuals.

It will thus be abundantly clear that the law relating to public processions and public meetings on the high ways has been developed entirely from the standpoint of absolute necessity for preserving the King's peace. A procession or meeting can only be interfered with when it involves an apprehension of the breach of the peace; and this is the gist of the misdemeanour of unlawful assembly. So an unlawful assembly has been defined as "an assembly of three or more persons with intent either to commit a crime by open force or to carry out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it. "Dicey's theme on the other hand, is that all meetings and processions are lawful unless they constitute an unlawful assembly:

his reach. Then the pleadings are stamped and verified and filed before the Master of the High Court and a summons or notice is taken out and served on the defendant. Generally the defendant is given 28 days time to file his Written Statement. But in special causes such as causes under Order 37 of the Civil Procedure Code he is given only ten days time to appear before the court. After the written statement of the defendant has been filed an order for discovery is generally made on both sides. Then discovery and inspection is made and trial of issues is held if it is necessary. Then the suit is placed in the Prospective List and it works its way for long months and years through the Prospective List to the Warning List and then to the Peremptory List for hearing. At the hearing of the suit a counsel or advocate has to be appointed for conducting the case and examining and cross-examining the witnesses. In the conduct of the case there are many technical rules of evidence and other procedural rules, the knowledge whereof is absolutely essential. For a lay man however, unaccustomed to the techniques of law and procedure, it is well nigh impossible to put his case in the appropriate manner and pitted against a lawyer it may be impossible for him to get justice.

Justice is associated with truth. The finding out of truth is a difficult task, and has become more and more involved owing to procedural difficulties. It has already been pointed out how a suit has to be brought to a hearing in the original side of the High Court and what a crooked and confusing procedure a litigant has to go through. Sometimes the ordinary suits are not decided in the lifetime of the litigant. His heirs have to continue the suit started by their predecessor. A partition suit, for instance—once started does not seem to end in one generation unless, of course, all the parties are exhausted. It is this delay in the dispensation of justice that robs it of much of its charm and efficiency, and there is considerable truth in the saying "Justice delayed is Justice denied."

Secondly Justice is often beyond the reach of ordinary litigants as it is exceedingly expensive. A lay litigant cannot conduct his case owing to the technical rules of procedure and masses of authorities that have now grown up. The assistance of competent lawyers is often a burden too great to bear. And yet they have to bear it as they have no alternative. But their woes are not at an end. There is still the question of the execution of the order or decree of the court. An English lawyer once said that in India trouble starts after the decree but in England all troubles come to an end with the decree. From the above statement we may easily find that the execution of a decree of the High Court is also a very difficult and troublesome affair. An order for execution of a decree of High Court is generally made before the Master of the High Court and execution is made by either attachment or sale of the property or the person against whom the decree is made. The writ of attachment or imprisonment is generally lodged with the Sheriff and executed by him. If the property attached is moveable property it is seized after a sufficient time has been allowed to the debtor for payment of the sum due and an order is then obtained by the decreeholder from court for sale by auction. If it is immoveable property a sale order is taken and the Sheriff's sale is notified and an auction is held and the property is sold to the highest bidder. If the judgment debtor secludes himself and his property then an order for arrest can be obtained from court and a warrant for arrest may be issued against the judgment debtor.

In passing through the various stages in litigation what troubles and what enormous expenses a litigant has to bear! The solicitors who engineer and conduct the case divide the costs into two sets. One is called out-of-pocket cost and the other is called the inpocket cost. Out-of-pocket cost is that portion of cost which consists of court fees, stamps, advalorem duty and fees to the counsel and advocate and the inpocket cost consists of the other part of the cost which is his own remuneration or profit in rendering his services to his client.

How difficult it is for an ordinary poor litigant to seek justice in the High Court! For many it is rather a frightful thing to take any matter to the High Court because of the sickening delay and the diverse technicalities and the inordinate expenses incurred therefor. For a poor man therefore Justice is a rare thing to expect. The longer a man's purse is, it is easier for him to get the assistance of more eminent solicitors and counsel. The result is that a poor man is thwarted and Justice is often denied to him though unwittingly. What is true of the High Court is also true of other courts in a greater or lesser degree. The need of the hour is therefore to minimise the expenses of litigation so that the doors of the citadel of justice may not appear to be closed to all but a few who are fortunately rich. It will certainly not be wiser to go

back to the days of the Kazis for their swifter and cruder methods of dealing justice. But it is time for the authorities to devise legislation whereby the defects in the present system, namely delay and costs, may be cured. For, " Justice must not merely be done, but must appear to be done " to all and sundry.

INTRODUCING ANTIQUITIES EXPORT CONTROL ACT

BY

BIRENDRANATH MUKHERJEE

Any object having archæological, historical or artistic interest is a national asset. Such objects are the most powerful media of interpreting the culture of any country. As culture is not bounded by geographical limits, so the appreciation of these objects is not limited by time or confined to the country of origin. Artists, connoisseurs, collectors, dealers, etc., are keen to procure antiquities for their personal satisfaction and gain. In their craze for collection, sometimes, they do not hesitate to commit such acts as may be rightly called acts of vandalism. Modern vandals are very catholic and are in their outlook very international. Their exploits are not confined within their own country. For spoils they roam from one country to another. Subjection of a country by wars and through conquests gives the victorious vandals a unique opportunity to plunder these national assets as booty. To save them from vandalism and from natural decadence, it is the duty of every civilised state in normal conditions to protect and to preserve them as well as to control traffic in them.

In 1904 India had her first Act to deal with such traffic in antiquities. Section 17 of The Ancient Monuments Preservation Act, 1904, popularly known as Lord Curzon's Act, made a significant attempt to check traffic in " antiquities " which expression was defined to include any moveable objects which the Government, by reasons of their historical or archæological associations, may think it necessary to protect against injury, removal or dispersion. This clearly implies that the work of a modern master may pass from this country without any check which by no reasons can be justified unless the people and the Government are indifferent to them. Although every wrong has a remedy, this type of wrong cannot be undone as yet. In this connection it may be mentioned that there is a considerable section of wealthy art lovers who have collected specimens of foreign art. They also claim to understand every principle or peculiarity of Western Art. This in itself is not bad provided they are moved by genuine appreciation of art. But real appreciation of art will certainly teach a man only to distinguish between good art and bad art. It is therefore expected of them not to lack in rudimentary training to appreciate the beauties of Indian Art unless they are guided by other motives. Unfortunately, owing to the chronic antipathy for Indian Art, many valuable assets in the past have crossed the frontiers of India. These antiquities once removed from sight and site are very difficult to trace particularly when they leave the country where they are found. Scholars will have to undergo immense labour to trace them in future for their research works. It is, therefore, a necessity to restrict export of antiquities and of modern expressions of art.

This Act of 1904 testifies to India's full awareness that the culture of every other country deserves as much protection as her own. It gave power to the Governor-General in council to prohibit or to restrict the bringing or taking by sea or by land of any antiquities which are being sold or removed to the detriment of India or of any neighbouring country.

The Antiquities (Export Control) Act, 1947 (XXXI of 1947) the provisions of which are and not in derogation of, the provisions of the Ancient Monuments Preservation Act, 1904 (VII of 1904) or any other law for the time being in force, (according to Section 9 of this act), interprets " antiquity " as including

(*i*) any coin, sculpture, manuscript, epigraph, or other work of art or craftmanship,

(*ii*) any article, object or thing detached from a building or cave,

(*iii*) any article, object or thing illustrative of science, art, craft, literature, religion, customs, morals or politics in bygone ages,

(*iv*) any article, object or thing declared by the Central Government by notification in the official Gazette to be an antiquity for the purpose of this Act,

which has been in existence for not less than one hundred years—(Section 2 (a).

This interpretation seems comprehensive enough to cover all forms of art expressions either current now or which may come into vogue in future. ' Export ' has been defined to mean export from this country by sea, land or air and no person shall export any antiquity except under the authority of a licence granted by the Central Government (Sections 2 (b) and 3).

It seems clear that no protection has been provided for modern master pieces. Perhaps it will be correct to say that civilisation is measured by past creations only, while for assesment of cutlure the present is an integral part. It is therefore in the interest of the country with a peculiar and distinct cultural heritage that all modern expressions of art should receive as much protection as her part. A legislation to this effect is now a necessity as otherwise some of the modern expressions of art may pass from this country without any check which will again create inconveniences to future scholars.

It is enacted that Section 19 of the Sea Customs Act, 1878, and all other provisions of that Act shall have effect accordingly, except that, the provisions of Section 183 of that Act nothwithstanding, any confiscation authorised under that Act shall be made, unless the Central Government, on application to it in such behalf, otherwise directs. (Section 4).

The Director General of Archæology in India has been given the power to decide finally whether or not an article is an antiquity in case of any dispute. (Section 6).

While congratulating the framers of this law, it must be said that past references are not wanting to establish that the authorities concerned in their interpretations of Indian Culture through this medium, have done as much harm as good! With the changed outlook and constant and careful vigilance from the interested academicians it may be expected that in future the authorities will adjudicate on these matters fearlessly in the interest of the country to the best of their abilities and knowledge.

It has been further enacted that the Central Government may prescribe the procedure for granting licences for the export of antiquities, and fix the fees payable on application therefor. (Section 7 (2).

It has been said earlier that objects d' art have international appeal. It will therefore be monstrous to suggest absolute control of antiquities so as to stop their export altogether. Interested academicians of other countries may require type-specimens of Indian Art for their researches. Museums of foreign countries will always endeavour to represent India's Cultural Heritage through these media. If a museum or an academy of a particular country is stored with inferior specimens only, little respect will be created in the mind of the foreign art-lovers and students of art for Indian Culture as a whole. It will therefore be always justifiable to export antiquities as true and faithful messengers of culture under Government supervision. But at the same time a complete list of such specimens fully documented with photographs, and other notes etc., as may be required in future, is to be maintained by the Government. This list should be easily available to all as this is required to help Indian students for comparative studies and to check and to interpret their own findings.

It is evident and clear from Sections 2 (b), 3 and 7 (2) of the Antiquities (Export control) Act that it is not the intention of legislators to prohibit export of antiquities altogether from this country. This is, on the other hand, a just and welcome measure in the right direction to enable the Government to put an end to vandalism, smuggling and export of antiquities which are detrimental to the interest of the country. Further it will not be just to ascribe this legislation to any evil design of foreign rulers. Even the constitution-makers of Independent India are fully alive to the importance of such a measure as will be evident from Article 39 of the Draft Constitution of India.

" It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Parliament by law to be of national importance, from spoliation, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to law made by Parliament all such monuments or places or objects."

The above article was debated in the Constituent Assembly on the 24th November, 1948; and amendments were also moved to amend this article and the motion " That article 39, as amended, do stand part of the constitution," was adopted. (Vide Constituent Assembly Debates Volume VII No. 12).

It will stand thus in the future constitution of India.

" It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Parliament by law to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be."

It should be clearly understood that an enactment of this nature is no good unless the people, the academicians and the Government take keen interest in their ancient monuments and antiquities. It is high time that they should show more concern for and take pride in their artistic creations for which India can rightly claim a high place of honour in the world of art and culture.

LATE SRI SACHCHIDANANDA MUKHERJI

BY

GOUR K. GANGULY

The tragic death of Sri Sachchidananda Mukherji, a second-year student of our college, has removed from us a noble heart and a fighter for student's cause.

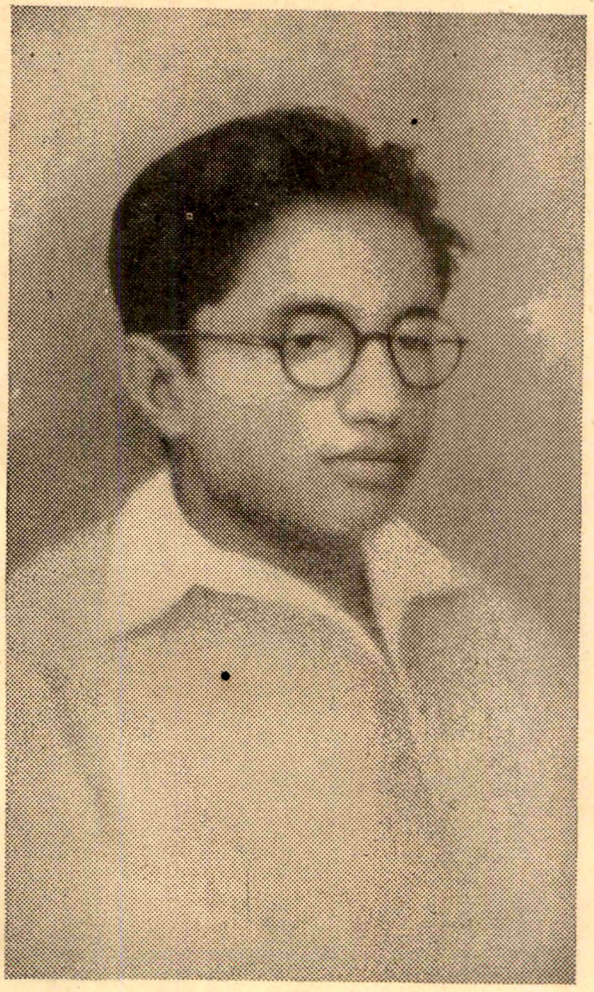
Born on the 12th March, 1929, he was the second son of Sri Bhupendrakumar Mukherji of Jharia. Sachchidananda matriculated from the Jharia Raj H. E. School, and during his school days showed considerable interest in intellectual and social work. In 1944, he took admission in the Bankura Christian College and graduated in the year 1948. During this period he began to take more and more interest in the social and political activities of the students. He was one of the chief organisers of the Bankura District Students' Congress and a political library. He was the General Secretary of Ronaldshay Hostel and a prominent worker of the Bankura College Union.

He entered our college as a student in 1949, and soon was included in one of the College Union Sub-Committees. He was also the Organising Secretary of the Young Socialist League at Calcutta. Sachchidananda had a deep and cultivated taste for literature. He wrote poems, some of which are beautiful and showed a deep poetic sense.

His end was tragic. After his preliminary examination in Law, he went to a picnic party on the bank of the Ganges together with some of his friends. On that day, the 6th of August, while washing his hands in the river, his feet suddenly slipped and he was drowned. His body was later recovered in an unconscious state. He regained consciousness for sometime, but lost it again and breathed his last at 1-30 A.M., on the 8th of August, 1950, at the R. G. Kar Medical College Hospital.

To me, this death is a great personal loss. I was with him at the Ronaldshay Hostel, Bankura, and here in the Hardinge Hostel, for four long years, and we were deeply intimate.

May his soul rest in peace.



Late Sachchidananda Mukherji

THE ADDRESS OF THE GENERAL SECRETARY AT THE ANNUAL RE-UNION 1950

BY

ASOKEKRISHNA DUTT

MR. PRESIDENT, HONOURED GUESTS, FELLOW STUDENTS, LADIES AND GENTLEMEN,

We are assembled here drawn by the ties of common association. We bring with us our greetings and good wishes. The occasion is one, which stirs the recollection and our sentiment of attachment for the past, but even more, it kindles our hopes for the future. I may say that it is not possible to express in words the feelings and sentiments, which your presence in our midst evokes.

We meet today for the eighth time since the Re-Union meeting started in 1942-43. I have the privilege of addressing you on behalf of a Union, which is the Premier College Union of Calcutta, and which has always maintained its preeminence. It is needless to say, that, students and ex-students of this college, who were members of such a Union, would naturally meet and make their Annual Re-Union a grand success.

We recall the service which this institution has rendered, not only to the legal profession but to the public in general. Lawyers have led our country for the last half-a-century and most of them, specially of this province, have been connected with this institution. It is not without reason that we boast of the greatness of our college and its past traditions.

It is indeed a privilege for us, who are students of the college, now to meet you ex-students of the institution. We not only refresh our recollections about the past and remind ourselves about the great ex-students of the college, but we are inspired for the future by your presence. As one of our distinguished ex-students here was telling me a few days ago that he had seen a vague and vacant look in the eyes of Law students and he thought that it was due to the fact that they had no confidence in the merit of their subject. There is, no doubt, some truth in this. Many outsiders and some students even themselves think that they have taken up Law, because they have nothing else to do. But the most important reason for the lack of interest in the Law student is due to the fact that he is bored with the theoretical education he gets. We students have very little opportunity to learn from successful lawyers, the practical experience which they have gathered, and which would be so important for us to know. This Re-Union meeting, once in a long year is probably the only opportunity we get of coming into contact with the experienced lawyers. This is the only occasion when students get some idea of their future life by seeing the ex-students, and naturally I have said that it is a privilege for us.

It is really inspiring for us to recall to our mind the names of the great personalities this institution has produced and the great men who like us, were once students in this college who had like us attended lectures and moved about these places regularly. And it is simply wonderful to feel that we have some of them amongst ourselves at this moment.

Our speakers here today are well-known, but I consider it is a duty to say a word or two to you about them.

I consider it superfluous to introduce Sri Charu Chandra Biswas, our President today to you, ladies and gentlemen. He is far too well-known to all of you. You, Sir, also do not require any new introduction of this assemblage. As one associated with the college for years and having a hand in its management for a long time, you have come into contact with most of the ex-students and students, and now as the Vice-Chancellor of our University, you know us more intimately.

Our honoured Chief Guest is a pride of our institution. Sri Nirmal Ch. Chunder is not only great as a Lawyer but he happens to be the President of the Society of the members of his profession. At one time he had been one of the leading figures in the political life of Bengal and today in his advanced years, he has kept up his reputation by keeping himself aloof from all political parties, not sharing their little fame and much notoriety.

I will ask you, Mr. President, Ladies and Gentlemen, to join me in congratulating ourselves on securing the presence of Sri Kali Prosad Khaitan here as one of our principal

speakers today. We do not welcome him only as a great Lawyer, the Standing Counsel, but because he being one of the most successful lawyers cherishes in his mind a great desire to come into contact with students of Law and help them with his vast experience, and offer them his guidance. He will speak today about his reminiscences as one who was lucky enough to be in the very first batch of students in this institution.

Unfortunately we are missing our Principal here, due to the death of his wife suddenly a few days ago. Mrs. Banerjee herself had taken lively interest in the activities of the College Union. She had joined us in many of our functions and wished us the best of success. We sincerely mourn her loss, and convey our heartfelt sympathy to our Principal.

Our newly elected President of the Union this year, Prof. Ramendra Mohan Majumdar, has returned to his Presidential post to guide the Union again after a few years of retirement. In spite of his ill-health he is taking all pains and doing his best to make the functions of the Union, successful. We owe much to him for the organisation of this meeting today.

It was the custom for the General Secretary to read a report of the activities of the Union at this meeting. It was within the scope of the General Secretary then, to do so, because the Re-Union meeting was held at the end of his annual term of office. Due to the riots the elections were delayed in 1946, and ever since then, so typically like every other thing here, the delay in the elections is continuing year after year. I and my working committee have had about three weeks taste of office and naturally we have not got much to report about.

During this time we have organised besides this function, an ALL BENGAL DEBATE, which we will hold at the Asutosh Hall next Tuesday evening at 4-30. The Hon'ble Mr. Justice A. N. Sen will preside over the function. Many notable colleges are going to participate in it and we also have got a strong home team. Next Saturday at 2 P.M. we are having a Legal Conference at the Asutosh Hall on a grand scale. The Hon'ble the Chief Justice of the Calcutta High Court will preside. We will be having such eminent men like The Hon'ble Mr. Justice P. B. Mukherjee, The Hon'ble Mr. Justice J. P. Mitter, Sri Atulchandra Gupta, Dr. Radha Binode Pal, Sri Sudhirchandra Mitter, Prof. Debendranath Banerjee of the Calcutta University among others to speak on the occasion.

We will have our ANNUAL SOCIAL and our Dramatic Performance in the next term. For the Drama we are trying to collect a suitable One Act Play written by students themselves, and if successful we will stage it.

We have also planned amongst other things to hold an ALL INDIA DEBATE after many years, and revive the fame of our Asutosh Trophy once more. I think that Miss Manjula Roy, our able Debate Secretary, who is the first Lady student of this College to hold a Union Portfolio, will make our plans successful.

Immediately on our assumption of office, we have started a Relief Fund for the East Bengal Refugees and we have been able to raise a moderate sum already. By next Saturday, when the College closes for this session, I think we will have a decent total. To those of you, who would be generous enough to contribute to the fund, organised by your old College Union, I appeal to send your contributions to the (Law College) Union Office or to give them to our collectors in exchange of a receipt.

This refugee problem which has assumed such an acute proportion at present, is of course, not a new one. The possibility of such a grave situation was there ever since the arrangements for partitioning India were made and it took shape immediately afterwards.

Efforts were made to save the situation, every time the problem became critical, by patching up things, but naturally such arrangements have never been successful.

In the light of our past experience we cannot have much faith in the Nehru-Liaquat Agreement. We whole-heartedly endorse the protest that our notable ex-student Dr. Syamaprasad Mookerjee has made against the weak, inconsistent and faltering policy of the India Government.

It is neither suitable nor desirable to talk much of politics on such an occasion as this, and neither do I intend to waste your time, ladies and gentlemen, by discussing that immense problem, which is facing Bengal today. We are always talking about it in our day to day existence, for everyone of us is feeling its bitterness in a large or small degree. We must be determined to save our Province ourselves, not depending on others. Only then can Bengal regain its lost position as the leading State of India—a position she had acquired by her endless sacrifices, sufferings and efforts, and a position she is about to lose

or is losing, because she has lost her courage of conscience and spirit of sacrifice.

But we are sure that our homeland will again be free from dark clouds and Bengal with which our highest hopes and noblest aspirations are bound with unbreakable ties will rise to regain her unique position in the family of the states of India. The solution of the Bengal Problem will solve that of India. But the problem has many aspects and it will take much patience and tact to solve it.

In conclusion, Mr. President, Ladies and Gentlemen, I would like to thank you from the depth of my heart for coming and joining us in this happy meeting, which is to commence now.

After the Address of the President, our Chief Guest will speak followed by the speeches of Sri Kali Prosad Khaitan and Sri Ramen Majumdar, the President of our Union and the Report of Sri Ajit Ghosal, the Re-Union Secretary. You will listen to Songs, Recitations, Caricatures, etc., by students and ex-students. One of our students will play Sitar for you and another will play on the Tabla. A distinctive feature of our function is that all the participants will be students and ex-students. We will not have a single professional from outside.

At the end of the function we will offer you some light refreshments and cold drinks. We hope you will kindly accept our moderate but sincere hospitality.

I would be doing injustice to the workers of the Union if I do not mention that without their ceaseless efforts it would not have been possible for us to assemble here for this happy occasion.

I thank you once more Mr. President, Ladies and Gentlemen.

ANNUAL REPORT OF THE UNIVERSITY LAW COLLEGE ATHLETIC CLUB 1949-50

The Athletic Club of the Calcutta University Law College presents its annual report to the students. The usual session of the Club begins from August but owing to late publication of University results of the degree examinations, we had a late election in the month of January. Naturally, we had very little to do within such a short time at our disposal.

Still then, with all the keenness of the members of the Athletic Club, the activities of the Club were quite satisfactory, and the performance in every branch was really laudable.

We entered the Inter-Collegiate Cricket, and our team lost in a keen contest to R. G. Kar Medical College. We beat St. Paul's College in a thrilling match; it was a one-wicket victory. Our College Cricket team was invited to play at Jalpaiguri against the Jackson Medical School, and the match ended in a draw. The notable feature was an unbeaten 50 by R. Sen—our captain. M. Roy (Vice-Captain), R. Guhathakurata, A. Ghosh, P. Dutta, A. Chatterjee and A. Sircar always lent their sincerest service to the team.

In Hockey our Club also excelled. We stood 4th in the Inter-College League and beat the formidable St. Xavier's College in a crucial match. Our thanks go to the able Captain R. Bukshi and his able lieutenants K. S. Gill, P. Dutta, A. Sircar, M. Roy, J. Barua and others.

In the Inter-Collegiate Volley-Ball Competition we were in the Final and lost to R. G. Kar Medical College in a five set duel. It was under the leadership of B. L. Lahoti that our team did so well.

We participated in the Inter-Collegiate Tennis and Table-Tennis Competition and lost to B. E. College and St. Paul's College respectively after a keen contest. N. C. Gohain our Indoor-game captain and at present also the Tennis captain lead both the teams quite creditably.

We have formed a good Rowing and a Basket Ball teams under the captainship of Provash Roy and J. Barua respectively, but they have yet to show their progress.

As in the last year, the Annual Sports was held late in February. It was well contested as the number of competitors was quite big—in fact bigger than usual. Sri Amiya Ghosh of the third year class got the Individual Championship in a thrilling finish. Our revered Principal Sree Annada Charan Karkoon presided and Sree A. K. Basu, Barrister-at-Law was the Chief-Guest and distributed the prizes. For the first time in the history of the College, girl students competed, and Miss Manjula Roy and Miss Shefali Sinha were the winners. Our special thanks to Sree P. Mustafi, an ex-student of the College who quite efficiently conducted the management of the Sports. Our heartiest thanks to Sree Annadacharan Karkoon and to Dr. B. Raychaudhuri, Professor-in-charge of Games, Sri Mrityunjoy Basu and Sri Sribhusan Mitra for their constant guidance, good wishes and co-operation.

This year in football we have formed a formidable side under the able captainship of the renowned Bengal and Mohan-Bagan inside right—Sri R. Guhathakurata. We hope to do well in the coming season and our well-wishers can safely rely on the new-comers and some of our old members of which A. Ghosh, A. Sircar, J. Barua, Susanta Raychaudhuri, C. S. Basu, M. Roy, P. Dutta, A. Mukherjee, and R. Biswas are strongholds for a good show.

Amiya Ghosh,
Anil Das,
Joint Secretaries.

ANNUAL REPORT OF THE LAW COLLEGE GYMNASIUM

The Gymnasium of the Law College bears testimony to the fact that the budding lawyers of to-morrow are not entirely unmindful of their physical health and well-being. Since the body has been recognised as the stepping-stone to mental and spiritual progress, it is in the fitness of things that a well-equipped gymnasium should form part and parcel of every educational institution.

Our Gymnasium is well-equipped in more senses than one. The instruments available for use are the best that can be desired. The hall itself is spacious and well-ventilated. Above all, it is run under the able supervision and guidance of the renowned physical culturist of Bengal, Sri Monotosh Roy, who takes a keen interest in the activities of the gymnasium. Although attendance in the gymnasium is not all that can be desired, the students who take part in its activities profit enormously from it. Our esteemed Principal and Vice-Principal encourage us from time to time by their visits and it is a happy thing to record that the gymnasium is never made to suffer for want of funds.

Last year we participated in some physical demonstration competitions. Two of our members took part in the Inter-Collegiate Muscle-posing and Weight-lifting Competition. But, for certain unavoidable reasons, the annual competition for the S. K. Gupta Cup could not be held in time. We hope to be able to announce the date for entries in the competition within a short time.

My experience as Secretary of the gymnasium during the past one year has shown me that most of the students here are not very enthusiastic about Physical Culture and the small attendance at the gymnasium has often

given me cause for reflection. It cannot be that the value and importance of physical culture is unknown to them. May I ask my fellow-students to give up their hesitant moods and join the gymnasium in larger number? I have no doubt that with the rich experience of our Physical Instructor, Sri Roy, at their disposal, the students will not only be able to build up their own physiques, but also help in the creation of a mightier Bengal for to-morrow.

Jyotish Mojumdar,
Secretary, Gymnasium.

UNION REPORT FOR THE SESSION 1948-49

When we originally started the year under review, it augured well for us. Much as we hoped this pleasant augury would continue, it, however, later thinned out. Unforeseen and unfortunate disturbances in the city from time to time put occasional brakes upon our programme. Without these, our stock-taking would have been a far more pleasant endeavour.

It has been happily customary with us to hold an annual Legal Conference each year in our college. The College Union started its career this session as it fell upon this traditional duty. On April 23, 1949, we held the Legal Conference, and incidentally open our Union week, with the Hon'ble Mr. Justice R. C. Mitter on the chair. Eminent legal personalities like Sri N. K. Basu, Sri S. N. Modak, Sri C. C. Ganguly, Sri J. P. Mitter, Sri Sitaram Banerjea, Janab S. M. Murshed and Mr. N. Barwell brought their famed erudition to bear upon the occasion to which they contributed ably and well. While thanking these distinguished speakers as well as the President of the Conference, we recall with pleasure a record students' attendance. This overwhelming response possibly displayed the interest that our friends were slowly taking in matters which were previously considered dull and rugged.

An atmosphere of joy and informal cordiality we successfully revived when we had our annual social gathering on April 25, our Principal Sri A. C. Karkoon presiding. Every body felt the spell of compelling amiability as the function was on. The variety entertainment embracing many local talents was a singular success; the music and dance touched all.

We were called upon to annul our open-air arrangements in the University Lawn suddenly, when in the evening of April 26, early summer's storm-bearing clouds threatened and finally broke-in. Quickly, however, we shifted the venue to the Durbhanga Hall, where we held our annual Re-Union. Our chief guest was Mrs. A. Erzina of the Soviet Embassy in India, our guest of honour Sri Atul Gupta and Dr. P. N. Banerjee, the Vice-Chancellor of Calcutta University. The President, Mrs. Erzina gave an interesting account of the vast educational experiment that proceeded in her land.

That students sometimes threw up potential dramatic talents was evident from the dramatic performance, "Manmoyee Girls' School" that we presented in the University Institute Hall in the evening of the 27th April. This followed a physical demonstration that was widely appreciated by the students of the college.

Closely on the heels of these functions were due to come the Inter-class Debate and Poster Exibition. Disturbances, however, flared up in the city, the summer vacation came, and much that we wanted to do was tragically undone.

On July 25th, we accorded a welcome to Dr. P. N. Banerjee on his return from his tour in America. The Hon'ble Mr. Justice Bijankumar Mukherjea of the Federal Court of India presided.

On September 15 and 19 arrangements were finalised to receive the newcomers in a social gathering and to hold All-Bengal Debate Competition respectively. Unfortunately these dates coincided with one of the peak periods of students' repression. At that time the Commerce students were facing Police lathi-charge before the University in order to have their legitimate demands fulfilled. The sine-die closure of the University followed

Meanwhile much happened that brought this famous University into disrepute. When the college re-opened in November, newcomers were no longer new and the point of holding this function was gone.

Prof. Sitaram Banerjee who was connected with this great institution since 1912 parted from us. We presented our farewell address to him on that day. We promised him in all humility that the memory he left behind would remain embalmed in our humble remembrance.

In conclusion of my report I would like to make a passing reference to the present political situation of the country. Today we live amid tumultuous times. We are also passing through a very critical period of India's history. Dark forces of reaction stalk the land. If these continue and are allowed to multiply, India, this fair land of ours, may be laid to hopeless waste. To my mind, however, students will do an important duty, if they set themselves to arrest the present drift and build up a better and greater India. In the context of this duty our college union, the premier Students' Union in West Bengal, will have to play a leading part. That convention allows the General Secretary of this Union to convene the " College Union Secretaries Association " is a reminder of the confidence placed in us and the duty we are wanted by our friends to do. This burden, great as it is, is also glorious. I hope, however, the students of the University Law College would rally round the Union in its march towards peace, prosperity and progress.

KSHITISHCHANDRA DAS,
General Secretary (Offg.)

OURSELVES

During the Union Week of 1950, three functions were organised by the Union. On April 22 the Annual Re-Union of the College was held in the Senate Hall where the Hon'ble Mr. C. C. Biswas, the then Vice-Chancellor of the Calcutta University, presided and Sri K. P. Khaitan and Sri N. C. Chunder were the chief speakers. It was a big, compact and happy gathering and all our guests were treated with light refreshments.

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The All-Bengal Debate for B. K. Basu Memorial Trophy was held on the 25th April, 1950, and was presided over by Mr. Justice A. N. Sen. Dr. J. K. Banerjee, Professor N. C. Bhattacharyya and Professor Amlan Dutt were very kind to act as judges. Besides our college team, the University P.-G., the St. Xavier's College, the Medical College and the Scottish Church College teams participated in the debate. Sri Bishnu Mookherjee of the Medical College won the individual championship while the team championship was won by the home team consisting of Sri Dhurjati Chakravarty and Sri Ranabir Mahapatra.

* * * *

The Annual Legal Conference was held on the 29th of April, 1950. We are very proud to say that the Hon'ble the Chief Justice of the High Court of Calcutta presided over the function. We are proud because this is for the first time in the history of the College Union that the Chief Justice of the Calcutta High Court presided over its function. Other speakers of the day were Mr. Justice P. B. Mukharji Sri Atulchandra Gupta, Prof. D. N. Banerjee, Sri S. C. Mitter and others. Unfortunately, Mr. Justice J. P. Mitter, who would have spoken about " Law relating to Railways," could not do so as he was suddenly taken ill. Dr. Radhabinode Pal, who would have spoken on " International Law," could not attend the conference since he had to go elsewhere due to some unavoidable reasons.

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The first convention of the National Union of Students took place in Bombay in the middle of September, 1950. The National Union of Students is a non-political organisation, a federation of College Unions for furthering the common needs of the students. It stands for the all-round development of the student com-

munity—cultural, educational and political.

The delegates from our college were Sri Asokekrishna Dutt, Sri Gourkishore Ganguly, Sri Amiyakumar Ghose and Sri Chandisadhan Bose. Our delegates took a leading part in the deliberations of the convention. Moreover, our General Secretary Sri Asokekrishna Dutt has been elected to the General Council of the National Union of Students.

The National Union of Students had a good start and if the enthusiasm and sincerity our delegates saw among that huge assemblage of delegates representing more than a lakh and a half of Indian Students means anything then it has a bright future.

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A fund for East Bengal Refugee Relief had been started under the auspices of the Union. About Rupees nine hundred has been collected from the students. In this connection the name of Sri Manjula Roy requires special mention for her untiring effort in raising about four hundred rupees. The money will be presented for Refugee Relief to some suitable organisation at the next Social function.

* * * *

The Union is now endeavouring to organise the All-India Debate for the famous Asutosh Memorial Trophy on the 23rd February next. Though inaugurated in 1939, it could not be held for the past few years due to the disturbed conditions prevailing in the city. We have already received encouraging response from different parts of India, and hope that it would be a grand success.

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The Annual Social is going to be held by the middle of the next February. As the results of the B.A. Examination of our University were published at a very late stage we could not hold it in due time.

CALCUTTA UNIVERSITY LAW COLLEGE UNION SUB-COMMITTEES, 1949-50

The following is the complete list of Sub-Committees associated with the different Joint Secretaries, which was drawn up by the General Secretary in conjunction with them, and passed by the Central Council on the 4th April, 1950.

Magazine

President.
Editor-in-Chief.
General Secretary.
Magazine Secretary.
Nirupom Shome.
Ranjit Bakhshi.
Sudhir Ranjan Roy.
Md. Khadem Rasul.

Re-Union

President.
General Secretary.
Jt. Secretary, Re-Union.
Jt. Secretary, Re-Union.
Asoke Krishna Banerjee.
Abdul Raquib.
Purushottam Khaitan.
Chandi Bose.

Students' Aid

President.
General Secretary.
Jt. Secretary, Students' Aid.
Deonandan Singh.
Anil Kumar Sadhu Khan.
Chandi Bose.
Chittaranjan Mondal.
Madanmohan Bhagat.

Drama

President.
Prof. Pratap Ch. Chunder.
General Secretary.
Jt. Secretary, Drama.
Debansu Mukherjee.
Sudhin Gupta.
Chitta Datta.
Krishna Kumar Sarma.

Debate

President.
General Secretary.
Secretary-in-charge of Debate.
Dhurjati Chakravarti.
Arindrajit Chowdhury.
Samir Gangooly.
Golab Chandra Oswal.
Gayatri Bhattacharia.

Cultural

President.
General Secretary.
Secretary-in-charge of Cultural Functions.
Sujit Kumar Chakraborty.
Nirupom Shome.
Amal Kumar Mitra.
Bibhas Chandra Ghose.
Raghubir Chakraborty.

Office Management

President.
General Secretary.
Joint Secretary-in-charge of Office.
Prosad Mukerjee.
Ashish Kusum Ghose.
Sachidananda Mukerjee.
Sudhin Bhattacharyya.
Amiya Ghosh.

Social

President.
General Secretary.
Joint Secretary, Socials.
Krishna Kumar Pandey.
Sefali Sinha.
Barin Nag.
Amar Basu Chaudhuri.
Ranjit Bose.

WORKING COMMITTEE OF THE LAW COLLEGE UNION

SESSION 1948-49

Prof. B. Roychaudhuri, *President.*
,, P. C. Chunder, *Vice-President—(in charge of Socials & Drama).*
,, S. A. Masud, *Vice-President—(in charge of Debates & Legal Conference).*
,, S. P. Mitter, *Vice-President & Treasurer—(Editor-in-Chief of Magazine).*
Sri Durgaprasanna Chakraborty, *General Secretar*
,, Kshitischandra Das, *Asst. General Secretary.*
, Santoshkumar Chakraborty, *Office Secretary*
, Ranabir Mahapatra, *Debate Secretary*
,, Birendranath Mukherjee, *Magazine Secretary*
,, Nares Bose, *Social Secretary.*
,, Jyoti Majumdar, *Re-Union Secretary*
,, Sudhir Banerjee, *Re-Union Secretary*
,, Monoranjan Mukherjee, *Cultural Secretary*
,, Sisir Banerjee, *Secretary, Students' Aid Fund*

Members

Sri Dhirajkrishna Bose
,, Dibyendu Majumdar
,, Anil Das
,, Karunamoy Chatterjee
Miss Priti Banerjee
Sri Hirendranarayan Chaudhuri
,, Debkumar Banerjee